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Part I
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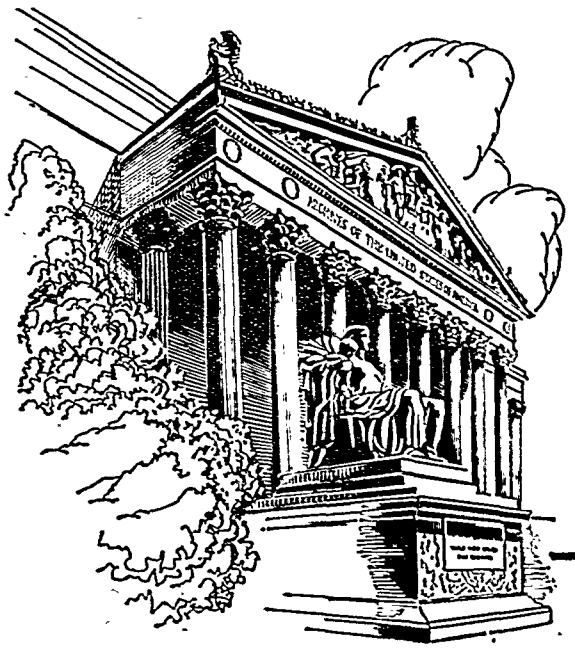

Volume 83

UNITED STATES STATUTES AT LARGE

91st Congress, 1st Session
1969

Contains laws and concurrent resolutions enacted by the Congress during 1969, reorganization plan, recommendations of the President, and Presidential proclamations. Also included are: numerical listings of bills enacted into public and private law, a guide to the legislative history of bills enacted into public law, tables of prior laws affected, and a subject index.

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Title 3—The President

EXECUTIVE ORDER 11576

Adjusting Rates of Pay for Certain Statutory Pay Systems

By virtue of the authority vested in me by subchapter I of chapter 53 of title 5 of the United States Code, as amended by the Federal Pay Comparability Act of 1970, and section 3(c) of that Act, it is hereby ordered as follows:

General Schedule

SECTION 1. The rates of basic pay in the General Schedule contained in section 5332(a) of title 5 of the United States Code are adjusted as follows:

"GENERAL SCHEDULE

"Grade	"Annual rates and steps									
	1	2	3	4	5	6	7	8	9	10
GS-1	$4,326	$4,470	$4,614	$4,758	$4,902	$5,046	$5,190	$5,334	$5,478	$5,622
GS-2	4,897	5,060	5,223	5,386	5,549	5,712	5,875	6,038	6,201	6,364
GS-3	5,524	5,708	5,892	6,076	6,260	6,444	6,628	6,812	6,996	7,180
GS-4	6,202	6,409	6,616	6,823	7,030	7,237	7,444	7,651	7,858	8,065
GS-5	6,938	7,169	7,400	7,631	7,862	8,093	8,324	8,555	8,786	9,017
GS-6	7,727	7,985	8,243	8,501	8,759	9,017	9,275	9,533	9,791	10,049
GS-7	8,582	8,868	9,154	9,440	9,726	10,012	10,298	10,584	10,870	11,156
GS-8	9,493	9,809	10,125	10,441	10,757	11,073	11,389	11,705	12,021	12,337
GS-9	10,470	10,819	11,168	11,517	11,866	12,215	12,564	12,913	13,262	13,611
GS-10	11,517	11,901	12,285	12,669	13,053	13,437	13,821	14,205	14,589	14,973
GS-11	12,615	13,036	13,457	13,878	14,299	14,720	15,141	15,562	15,983	16,404
GS-12	15,040	15,541	16,042	16,543	17,044	17,545	18,046	18,547	19,048	19,549
GS-13	17,761	18,353	18,945	19,537	20,129	20,721	21,313	21,905	22,497	23,089
GS-14	20,815	21,509	22,203	22,897	23,591	24,285	24,979	25,673	26,367	27,061
GS-15	24,251	25,059	25,867	26,675	27,483	28,291	29,099	29,907	30,715	31,523
GS-16	28,129	29,067	30,005	30,943	31,881	32,819	33,757	34,695	35,633	
GS-17	32,546	33,631	34,716	35,801	36,886*					
GS-18	37,624*									

"*The rate of basic pay for employees at these rates is limited by section 5308 of title 5 of the United States Code, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the effective date of this salary adjustment, $36,000)."

Schedules for the Department of Medicine and Surgery of the Veterans' Administration

SEC. 2. The schedules contained in section 4107 of title 38 of the United States Code, for certain positions within the Department of Medicine and Surgery of the Veterans' Administration, are adjusted as follows:

"Section 4103 Schedule

"Assistant Chief Medical Director, $37,624*.
"Medical Director, $32,546 minimum to $36,886 maximum*.
"Director of Nursing Service, $24,251 minimum to $31,523 maximum.
"Director of Chaplain Service, $24,251 minimum to $31,523 maximum.
"Chief Pharmacist, $24,251 minimum to $31,523 maximum.
"Chief Dietitian, $24,251 minimum to $31,523 maximum.

"*The salary for employees at these rates is limited by section 5308 of title 5 of the United States Code, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the effective date of this salary adjustment, $36,000).

"Physician and Dentist Schedule

"Director grade, $28,129 minimum to $35,633 maximum.
"Executive grade, $26,143 minimum to $33,982 maximum.
"Chief grade, $24,251 minimum to $31,523 maximum.
"Senior grade, $20,815 minimum to $27,061 maximum.
"Intermediate grade, $17,761 minimum to $23,089 maximum.
"Full grade, $15,040 minimum to $19,549 maximum.
"Associate grade, $12,615 minimum to $16,404 maximum.

"Nurse Schedule

"Assistant Director grade, $20,815 minimum to $27,061 maximum.
"Chief grade, $17,761 minimum to $23,089 maximum.
"Senior grade, $15,040 minimum to $19,549 maximum.
"Intermediate grade, $12,615 minimum to $16,404 maximum.
"Full grade, $10,470 minimum to $13,611 maximum.
"Associate grade, $9,026 minimum to $11,735 maximum.
"Junior grade, $7,727 minimum to $10,049 maximum."

Foreign Service Schedules

SEC. 3.(a) The per annum salaries of Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 867), are adjusted as follows:

"Class 1	$35,617	$36,894*	$37,624*				
Class 2	27,935	28,866	29,797	$30,723	$31,650	$32,580	$33,521
Class 3	22,135	22,873	23,611	24,349	25,087	25,825	26,563
Class 4	17,761	18,353	18,945	19,537	20,129	20,721	21,313
Class 5	14,432	14,913	15,394	15,875	16,356	16,837	17,318
Class 6	11,918	12,315	12,712	13,109	13,506	13,903	14,300
Class 7	10,014	10,348	10,682	11,016	11,350	11,684	12,018
Class 8	8,582	8,868	9,154	9,440	9,726	10,012	10,298

"*The salary for employees at these rates is limited by section 5303 of title 5 of the United States Code, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the effective date of this salary adjustment, $36,000)."

(b) The per annum salaries of staff officers and employees in the schedule contained in section 415 of the Foreign Service Act of 1946, as amended (22 U.S.C. 870(a)), are adjusted as follows:

"Class 1	$22,135	$22,873	$23,611	$24,349	$25,087	$25,825	$26,563	$27,301	$28,039	$28,777
Class 2	17,761	18,353	18,945	19,537	20,129	20,721	21,313	21,905	22,497	23,089
Class 3	14,432	14,913	15,394	15,875	16,356	16,837	17,318	17,799	18,280	18,761
Class 4	11,918	12,315	12,712	13,109	13,506	13,903	14,300	14,697	15,094	15,491
Class 5	10,692	11,048	11,404	11,760	12,116	12,472	12,828	13,184	13,540	13,896
Class 6	9,587	9,907	10,227	10,547	10,867	11,187	11,507	11,827	12,147	12,467
Class 7	8,593	8,885	9,172	9,459	9,746	10,033	10,320	10,607	10,894	11,181
Class 8	7,712	7,969	8,226	8,483	8,740	8,997	9,254	9,511	9,768	10,025
Class 9	6,915	7,146	7,377	7,608	7,839	8,070	8,301	8,532	8,763	8,994
Class 10	6,202	6,409	6,616	6,823	7,030	7,237	7,444	7,651	7,858	8,065".

Conversion Rules

SEC. 4. The agencies hereinafter designated shall prescribe such rules as may be necessary to convert the rates of basic pay or salaries of officers and employees to the rates prescribed in this order:

(1) General Schedule, the Civil Service Commission;

(2) Schedules for the Department of Medicine and Surgery of the Veterans' Administration, the Veterans' Administration;

(3) Foreign Service schedules, the Department of State.

Effective Date

SEC. 5. This order shall take effect as of the first day of the first applicable pay period beginning on or after January 1, 1971.

Richard Nixon

THE WHITE HOUSE,
January 8, 1971.

[FR Doc.71-468 Filed 1-11-71;10:53 am]

EXECUTIVE ORDER 11577

Adjusting the Rates of Monthly Basic Pay for Members of the Uniformed Services

By virtue of the authority vested in me by the laws of the United States, including the Act of December 16, 1967, and the Federal Pay Comparability Act of 1970, and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The rates of monthly basic pay for members of the uniformed services within each pay grade are adjusted upwards as set forth in the following tables:

COMMISSIONED OFFICERS

Pay Grade	Years of service computed under section 205			
	2 or less	Over 2	Over 3	Over 4
O-10 [1]	$2,111.40	$2,185.80	$2,185.80	$2,185.80
O-9	1,871.40	1,920.60	1,991.70	1,991.70
O-8	1,635.60	1,745.70	1,787.40	1,787.40
O-7	1,403.20	1,604.20	1,604.20	1,604.20
O-6	1,043.70	1,147.20	1,221.60	1,221.60
O-5	854.60	960.70	1,047.60	1,047.60
O-4	764.10	850.50	914.40	914.40
O-3 [2]	654.30	731.10	781.20	804.60
O-2 [2]	624.40	622.80	748.20	773.10
O-1 [2]	450.60	493.20	622.80	622.80

COMMISSIONED OFFICERS

Pay Grade	Years of service computed under section 205			
	Over 6	Over 8	Over 10	Over 12
O-10 [1]	$2,185.80	$2,263.50	$2,263.50	$2,443.50
O-9	1,991.70	2,011.20	2,011.20	2,094.60
O-8	1,787.40	1,920.60	1,920.60	2,011.20
O-7	1,671.10	1,671.10	1,662.60	1,662.60
O-6	1,221.60	1,221.60	1,221.60	1,221.60
O-5	1,047.60	1,047.60	1,050.20	1,137.60
O-4	920.60	972.20	1,033.20	1,097.10
O-3 [2]	890.00	933.70	980.10	1,033.20
O-2 [2]	762.30	762.30	762.30	762.30
O-1 [2]	622.80	622.80	622.80	622.80

COMMISSIONED OFFICERS

Pay Grade	Years of service computed under section 205			
	Over 14	Over 16	Over 18	Over 20
O-10 [1]	$2,443.50	$2,618.40	$2,618.40	$2,793.30
O-9	2,094.60	2,263.50	2,263.50	2,443.50
O-8	2,011.20	2,094.60	2,183.80	2,263.50
O-7	1,745.70	1,920.60	2,052.60	2,052.60
O-6	1,283.30	1,403.10	1,537.80	1,671.10
O-5	1,213.80	1,304.70	1,379.70	1,421.10
O-4	1,147.20	1,197.00	1,220.20	1,220.20
O-3 [2]	1,033.80	1,033.80	1,033.80	1,033.80
O-2 [2]	762.30	762.30	762.30	762.30
O-1 [2]	622.80	622.80	622.80	622.80

COMMISSIONED OFFICERS

Pay Grade	Years of Service computed under section 205		
	Over 22	Over 26	Over 30
O-10 [1]	$2,793.30	$2,967.60	$2,967.60
O-9	2,443.50	2,618.40	2,618.40
O-8	2,331.00	2,331.00	2,331.00
O-7	2,052.60	2,052.60	2,052.60
O-6	1,803.20	1,803.20	1,803.20
O-5	1,471.20	1,471.20	1,471.20
O-4	1,220.20	1,220.20	1,220.20
O-3 [2]	1,033.80	1,033.80	1,033.80
O-2 [2]	762.30	762.30	762.30
O-1 [2]	622.80	622.80	622.80

[1] While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $3,000.60 regardless of cumulative years of service computed under section 205 of this title.

[2] Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members.

COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER 4 YEARS' ACTIVE SERVICE AS ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205				
	Over 4	Over 6	Over 8	Over 10	Over 12
O-3	$864.90	$906.00	$933.70	$989.10	$1,033.30
O-2	773.10	789.30	814.20	866.60	889.80
O-1	622.80	665.10	690.00	714.60	739.80

COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER 4 YEARS' ACTIVE SERVICE AS ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205				
	Over 14	Over 16	Over 18	Over 20	Over 22
O-3	$1,080.30	$1,080.30	$1,080.30	$1,080.30	$1,080.30
O-2	914.40	914.40	914.40	914.40	914.40
O-1	773.10	773.10	773.10	773.10	773.10

COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER 4 YEARS' ACTIVE SERVICE AS ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205	
	Over 26	Over 30
O-3	$1,080.30	$1,080.30
O-2	914.40	914.40
O-1	773.10	773.10

WARRANT OFFICERS

Pay Grade	Years of service computed under section 205				
	2 or less	Over 2	Over 3	Over 4	Over 6
W-4	$666.30	$714.60	$714.60	$731.10	$764.40
W-3	605.70	657.00	657.00	605.10	673.20
W-2	530.40	573.60	573.60	590.40	622.80
W-1	441.90	507.60	507.00	549.00	573.60

WARRANT OFFICERS

Pay Grade	Years of service computed under section 205				
	Over 8	Over 10	Over 12	Over 14	Over 16
W-4	$798.00	$831.00	$889.80	$930.60	$963.90
W-3	722.40	764.40	789.30	814.20	838.80
W-2	657.00	681.90	706.50	731.10	756.60
W-1	598.50	622.80	648.30	673.20	698.10

WARRANT OFFICERS

Pay Grade	Years of service computed under section 205				
	Over 18	Over 20	Over 22	Over 26	Over 30
W-4	$989.10	$1,022.10	$1,056.00	$1,137.90	$1,137.90
W-3	864.90	897.90	930.60	963.90	963.90
W-2	781.20	806.10	833.80	833.80	833.80
W-1	722.40	748.20	748.20	748.20	748.20

ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205				
	2 or less	Over 2	Over 3	Over 4	Over 6
E-9 [1]					
E-8					
E-7	$399.00	$478.50	$496.20	$513.60	$531.30
E-6	344.10	417.90	435.00	453.00	470.40
E-5	297.30	366.00	383.70	400.50	426.60
E-4	249.90	312.00	330.90	350.70	374.40
E-3	180.90	252.30	269.70	287.40	287.40
E-2	149.10	208.80	208.80	208.80	208.80
E-1	143.70	191.10	191.10	191.10	191.10
E-1 (Under 4 months)	134.40				

ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205				
	Over 8	Over 10	Over 12	Over 14	Over 16
E-9 [1]		$749.00	$774.30	$792.00	$809.70
E-8	$635.10	692.80	670.20	687.90	705.30
E-7	648.10	665.50	683.50	699.00	625.70
E-6	487.50	505.20	531.30	548.10	565.50
E-5	444.00	461.70	478.50	487.50	487.50
E-4	374.40	374.40	374.40	374.40	374.40
E-3	287.40	287.40	287.40	287.40	287.40
E-2	208.80	208.80	208.80	208.80	208.80
E-1	191.10	191.10	191.10	191.10	191.10

ENLISTED MEMBERS

Pay Grade	Years of service computed under section 205				
	Over 18	Over 20	Over 22	Over 23	Over 30
E-9 [1]	$827.70	$843.90	$863.60	$975.60	$975.60
E-8	722.10	740.10	763.60	870.60	870.60
E-7	644.10	662.80	680.60	763.60	763.60
E-6	574.50	574.50	574.50	574.50	574.50
E-5	487.50	487.50	487.50	487.50	487.50
E-4	374.40	374.40	374.40	374.40	374.40
E-3	287.40	287.40	287.40	287.40	287.40
E-2	208.80	208.80	208.80	208.80	208.80
E-1	191.10	191.10	191.10	191.10	191.10

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps basic pay for this grade is $1,185.00 regardless of cumulative years of service computed under section 205 of this title.

SEC. 2. This order shall take effect January 1, 1971.

Richard Nixon

THE WHITE HOUSE,
January 8, 1971.

[FR Doc.71-467 Filed 1-11-71;10:52 am]

Rules and Regulations

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71-501]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the reference to the State of Ohio in the introductory portion of paragraph (e) and paragraph (e)(8) relating to the State of Ohio are deleted.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment excludes a portion of Clinton County, Ohio, from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the excluded area. The amendment releases Ohio from the list of States quarantined because of hog cholera.

The amendment relieves certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to affected persons. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 7th day of January 1971.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[FR Doc.71-375 Filed 1-11-71;8:49 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Civil Aeronautics Board

Section 213.3340 is amended to show that one position of Director of Information is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (c) is added to § 213.3340 as set out below.

§ 213.3340 Civil Aeronautics Board.

* * * * *

(c) Director of Information.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-350 Filed 1-11-71;8:47 am]

PART 213—EXCEPTED SERVICE

Federal Maritime Commission

Section 213.3367 is amended to show that the position of Confidential Assistant to the Chairman is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (a) of § 213.3367 is amended as set out below.

§ 213.3367 Federal Maritime Commission.

(a) One Confidential Assistant to each Commissioner other than the Chairman.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 C.F.R. 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-351 Filed 1-11-71;8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10760; Amdt. 737]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260–3, 8260–4, or 8260–5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97–696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ–405, 800 Independence Avenue SW., Washington, D.C. 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAPs, effective February 4, 1971:

Traverse City, Mich.—Traverse City Municipal Airport; ADF 1, Amdt. 3; Canceled.
Goodland, Kans.—Goodland Municipal Airport; VOR 1, Amdt. 5; Canceled.

Kingman, Ariz.—Kingman Municipal Airport; VOR-1, Original; Canceled.

2. Section 97.15 is amended by establishing, revising, or canceling the following VOR/DME SIAPs effective February 4, 1971:

Fresno, Calif.—Fresno Air Terminal; VOR/DME No. 1, Amdt. 1; Canceled.
Fresno, Calif.—Fresno Air Terminal; VOR/DME No. 2, Amdt. 1; Canceled.

3. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective February 4, 1971:

Bridgeport, Tex.—Lake Bridgeport Airport; VOR-A, Original; Established.
Chicago (Lansing), Ill.—Chicago-Hammond Airport; VOR-A, Original; Established.
Fort Wayne, Ind.—Municipal (Baer Field); VOR Runway 4, Amdt. 8; Revised.
Fort Wayne, Ind.—Municipal (Baer Field); VOR Runway 9, Amdt. 5; Revised.
Fort Wayne, Ind.—Municipal (Baer Field); VOR Runway 13, Amdt. 7; Revised.
Fort Wayne, Ind.—Municipal (Baer Field); VOR Runway 22, Amdt. 1; Revised.
Fresno, Calif.—Fresno Air Terminal; VOR Runway 11L, Amdt. 3; Revised.
Goodland, Kans.—Renner Field Goodland Municipal Airport; VOR Runway 30, Original; Established.
Howell, Mich.—Livingston County Airport; VOR Runway 31, Amdt. 1; Revised.
Jefferson City, Mo.—Jefferson City Memorial Airport; VOR Runway 12, Amdt. 7; Revised.
Jefferson City, Mo.—Jefferson City Memorial Airport; VOR Runway 30, Amdt. 5; Revised.
Los Angeles, Calif.—Los Angeles International Airport; VOR Runway 7 L/R, Amdt. 5; Revised.
Los Angeles, Calif.—Los Angeles International Airport; VOR Runway 25 L/R, Amdt. 6; Revised.
Poughkeepsie, N.Y.—Dutchess County Airport; VOR-A, Amdt. 8; Revised.
St. Clairsville, Ohio—Alderman Field; VOR-A, Amdt. 6; Revised.
St. Paul, Minn.—St. Paul Downtown Holman Field; VOR Runway 30, Amdt. 4; Revised.
Tecumseh, Mich.—Tecumseh Airport; VOR-A, Amdt. 1; Revised.
Traverse City, Mich.—Cherry Capital Airport; VOR-A, Amdt. 7; Revised.
Westfield, Mass.—Barnes Municipal Airport; VOR Runway 20, Amdt. 11; Revised.
Bay City, Tex.—Municipal Airport; VOR/DME-A, Original; Established.
Corpus Christi, Tex.—International Airport; VOR/DME Runway 35, Amdt. 1; Revised.
Fresno, Calif.—Fresno Air Terminal; VORTAC Runway 29R, Original; Established.
Lake City, Fla.—Lake City Municipal Airport; VOR/DME-A, Original; Established.
Poughkeepsie, N.Y.—Dutchess County Airport; VOR/DME Runway 6, Original; Established.
Humboldt, Tenn.—Humboldt Muncipal Airport; VOR/DME-A, Original; Established.

4. Section 97.25 is amended by establishing, revising, or canceling the following LOC-LDA SIAPs, effective February 4, 1971:

Allentown, Pa.—Allentown-Bethlehem-Easton Airport; LOC (BC) Runway 24, Amdt. 9; Revised.
Fort Wayne, Ind.—Municipal (Baer Field); LOC Runway 4, Original; Established.
Fort Wayne, Ind.—Municipal (Baer Field); LOC (BC) Runway 13, Amdt. 4; Revised.
Fresno, Calif.—Fresno Air Terminal; LOC (BC) Runway 11L, Amdt. 1; Revised.
Los Angeles, Calif.—Los Angeles International Airport; LOC (BC) Runway 6L, Amdt. 3; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; Parallel LOC (BC) Runway 6L, Original; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; LOC (BC) Runway 6R, Amdt. 3; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; LOC (BC) Runway 6 L/R, Original; Established.
Los Angeles, Calif.—Los Angeles International Airport; LOC (BC) Runway 7R, Amdt. 5; Revised.

5. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective February 4, 1971:

Athens, Ohio—Ohio University Airport; NDB Runway 27, Amdt. 2; Revised.
Brookings, S. Dak.—Brookings Airport; NDB Runway 12, Amdt. 3; Revised.
Columbia, Tenn.—Maury County Airport; NDB Runway 5, Amdt. 1; Revised.
Columbia, Tenn.—Maury County Airport; NDB Runway 23, Amdt. 1; Revised.
Dexter, Mo.—Dexter Municipal Airport; NDB Runway 36, Original; Established.
Fort Wayne, Ind.—Municipal (Baer Field); NDB Runway 31, Amdt. 13; Revised.
Fresno, Calif.—Fresno Air Terminal; NDB Runway 29R, Amdt. 15; Revised.
Goodland, Kans.—Renner Field Goodland Municipal Airport; NDB Runway 12, Original; Established.
Goodland, Kans.—Renner Field Goodland Municipal Airport; NDB Runway 30, Original; Established.
Greenwood, S.C.—Greenwood County Airport; NDB (ADF) Runway 27, Original; Canceled.
Greenwood, S.C.—Greenwood County Airport; NDB (ADF) Runway 9, Original; Canceled.
Lawrenceburg, Tenn.—Lawrenceburg Municipal Airport; NDB-A, Original; Established.
Los Angeles, Calif.—Los Angeles International Airport; NDB Runway 24 L/R, Amdt. 5; Revised.
Los Angeles, Calif.—Los Angeles International Airport; NDB Runway 25 L/R, Amdt. 33; Revised.
Millard, Nebr.—Millard Municipal Airport; NDB Runway 12, Original; Established.
Nevada, Mo.—Nevada Municipal Airport; NDB Runway 20, Original; Established.
Parsons, Kans.—Tri-City Airport; NDB Runway 18, Original; Established.
Tallahassee, Fla.—Tallahassee Municipal Airport; NDB Runway 36, Amdt. 10; Revised.
Traverse City, Mich.—Cherry Capital Airport; NDB Runway 28, Original; Established.
Troy, Ala.—Troy Municipal Airport; NDB Runway 7, Amdt. 1; Canceled.
Westfield, Mass.—Barnes Municipal Airport; NDB Runway 20, Amdt. 8; Revised.

6. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective February 4, 1971:

Asheville, N.C.—Asheville Municipal Airport; ILS Runway 34, Amdt. 12; Revised.
Fort Wayne, Ind.—Municipal (Baer Field); ILS Runway 31, Amdt. 17; Revised.
Fresno, Calif.—Fresno Air Terminal; ILS Runway 29R, Amdt. 18; Revised.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 7L, Amdt. 3; Revised.
Los Angeles, Calif.—Los Angeles International Airport; Parallel ILS Runway 7L, Original; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 24L, Amdt. 5; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 24R, Amdt. 1; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; Parallel ILS Runway 24R, Amdt. 2; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 24 L/R, Original; Established.
Los Angeles, Calif.—Los Angeles International Airport; Parallel ILS Runway 24 L/R, Amdt. 3; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 25L, Amdt. 30; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; Parallel ILS Runway 25L, Amdt. 1; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 25R, Amdt. 13; Canceled.
Los Angeles, Calif.—Los Angeles International Airport; ILS Runway 25 L/R, Original; Established.
Los Angeles, Calif.—Los Angeles International Airport; Parallel ILS Runway 25 L/R, Amdt. 2; Canceled.
Tallahassee, Fla.—Tallahassee Municipal Airport; ILS Runway 36, Amdt. 11; Revised.
Traverse City, Mich.—Cherry Capital Airport; ILS Runway 28, Original; Established.
Troy, Ala.—Troy Municipal Airport; ILS Runway 7, Amdt. 1; Canceled.

7. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective February 4, 1971:

Fort Wayne, Ind.—Municipal (Baer Field); Radar-1, Amdt. 6; Revised.
Los Angeles, Calif.—Los Angeles International Airport; Radar-1, Amdt. 27; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c), 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on January 4, 1971.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.71-285 Filed 1-11-71;8:45 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER D—TRADE REGULATION RULES

PART 422—FAILURE TO POST MINIMUM RESEARCH OCTANE RATINGS ON GASOLINE DISPENSING PUMPS CONSTITUTES AN UNFAIR TRADE PRACTICE AND AN UNFAIR METHOD OF COMPETITION

Promulgation of Trade Regulation Rule and statement of basis and purpose.

Introduction. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Subpart B, Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule

regarding the posting of research octane ratings on gasoline dispensing pumps. Notice of this proceeding, including a proposed rule, was published in the FEDERAL REGISTER on July 30, 1969 (34 F.R. 12449). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the Record by interested parties in response to the notice, as prescribed by law, and has determined that the adoption of the Trade Regulation Rule and statement of its basis and purpose set forth herein is in the public interest.

§ 422.1 **The rule.**

In connection with the sale or consignment of motor gasoline for general automotive use, in commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair or deceptive act or practice for refiners or others who sell to retailers, when such refiners or other distributors own or lease the pumps through which motor gasoline is dispensed to the consuming public, to fail to disclose clearly and conspicuously in a permanent manner on the pumps the minimum research octane number or numbers of the motor gasoline being dispensed. In the case of those refiners or other distributors who lease pumps, the disclosure required by this section should be made as soon as it is legally practical; for example, not later than the end of the current lease period. Nothing in this section should be construed as applying to gasoline sold for aviation purposes.

NOTE: For the purposes of this section, "research octane rating" shall mean the research octane rating as described in The American Society For Testing Materials (ASTM) "Standard Specifications for Gasoline" (D 439-70).

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Effective: June 28, 1971.

Promulgated: December 30, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

STATEMENT OF BASIS AND PURPOSE

I. *Background.* The Commission's affirmative interest in the question of posting octane ratings on gasoline dispensing pumps was indicated by announcement on July 30, 1969 of the initiation of a rulemaking proceeding. The notice was published in the FEDERAL REGISTER July 30, 1969, 34 F.R. 12449.

The information gathered in the public Record[1] of the recent proceedings does indicate that the absence of posting octane ratings on gasoline pumps by refiners or other marketers of gasoline does have an impact on consumers' ability to select the proper gasoline for their automobiles, both in terms of engine requirements and prices paid for the gasoline.

Before outlining the varied arguments for and against the proposition that octane ratings should be affirmatively disclosed on gasoline pumps, it may be well to review first principles: What is octane? What it is not. And why is octane important?

There is little, if any, disagreement as to what octane is. "The octane number of gasoline is a measure of the antiknock value of the gasoline or its ability to resist knock during combustion in an engine." (Ethyl Technical Notes, Record 174.)

"The octane number of a gasoline is simply a measurement which tells you how well the gasoline will resist knocking in an engine." (What's Octane? pamphlet published by Petroleum Chemicals Division, E. I. Du Pont de Nemours & Co., Inc., Record 101.) (For other descriptions of octane ratings see Popular Mechanics Product Feature, Octane, Record 102; Consumer's Report, October 1968, Buying Gasoline, Record 801; Atlantic Richfield Co., Record 703, Tr. 126; American Petroleum Institute, Western Oil and Gas Association, Record 455, Tr. 207; Mobil Oil Corp., Record 737, Tr. 246; The Standard Oil Co. of Ohio, Record 316; American Oil Co., Record 254; Continental Oil Co., Record 436; and Humble Oil & Refining Co., Record 569.)

Octane should not be confused with other features of gasoline and should not be considered the sole factor contributing to gasoline makeup.

"Octane is not power. Octane is not good mileage. It is not fast starts, or resistance to corrosion, or prevention of vaporlock, or any one of several other significant factors in gasoline quality." (Mobile Oil Corp., Record 737, Tr. 246.)

"Higher octane, in itself, will not improve gasoline mileage." (Ford Motor Co., Record 168.) (See also article entitled Gasoline—myth vs. fact, Changing Times, The Kiplinger Magazine, Record 143, 145.)

Professor Phillip S. Myers of the University of Wisconsin and national president of the Society of Automotive Engineers describes the phenomenon of "knocking."

"Under normal circumstances combustion in your car engine is the result of smooth progression of the flame front across the combustion chamber of the engine. However, if the air-fuel mixture in the cylinder is subjected to high pressures and temperatures for too long a period of time, the air-fuel mixture will burn in a very short period of time. This excessively rapid combustion is variously called detonation, knock or ping. The observant consumer is aware of this quality characteristic by the noise caused by this rapid combustion which is transmitted through the engine walls. As a matter of interest, the addition of lead to the gasoline enables it to withstand higher pressures, temperatures and/or longer times before knocking." (Statement of Professors P. W. Myers and O. A. Uyehara, Record 641, 645, Tr. 334, 340. See also Popular Science Monthly article Gas For Your Car, Record 109, for description of knocking, and statement of Ethyl Corp., Record 422; Standard Oil Co. of Ohio, Tr. 402.)

Knocking has its effects. "Knocking wastes power, lowers the engine's effectiveness and usually sounds like a multitude of light hammer taps on metal • • • Persistent or severe knock can damage your engine—crack pistons, damage valves and subject engine bearings to too-heavy shock loads." (Consumer Reports, October 1968, article entitled Buying Gasoline, Record 801, 803. See also Ethyl Technical Notes, Motor Gasoline Tests and Their Meaning, Record 175; Popular Science Monthly, Gas For Your Car, Record 109.)

Owners of Chevrolet automobiles for the year 1968 are warned in the owner's manual about the effect of engine knocking. "• • • continuous or excessive knocking may result in engine damage and constitutes misuse of the engine for which the Chevrolet Division is not responsible under the terms of the Manufacturer's New Vehicle Warranty." (Record 179.) Many of the 1970 owner's manuals published by auto manufacturers contain similar language showing their concern with excessive knocking. (See Pontiac, Oldsmobile, Chevrolet, Buick, American Motors, Cadillac, and Lincoln Continental owner's manuals, not included in the Record.)

The fact that "knocking," the beast to be controlled by the proper octane rating for gasoline, can be the agent of damage or the agent for potential damage to automobile engines reveals one of the reasons why the subject of octane rating of gasoline is important to consumers, refiners and automobile manufacturers.

It is important to the purchaser of gasoline from a standpoint of cost. "Unfortunately, many people buy too much octane. This is a throwback to the late 1950's when approximately half of the cars manufactured needed high octane gas for their high compression engines. In those days, the alternative would have been detonations and millions of knocking engines.

"This is no longer true. Almost 67 percent of today's new cars are designed to run on low octane (regular) gas. Those who use high octane (premium) unnecessarily are spending 4¢, 5¢, even 6¢ a gallon more for no reason. The high octane is not giving their engines anything that lower octane gasoline can't give them." (Popular Mechanics Product Feature, Octane, Record 102.)

"Your engine's octane requirement must be satisfied. There's no way to actually measure the octane number of a gasoline with your car, but the exact number doesn't matter. The important thing is to observe the antiknock performance of the fuel. If other aspects of gasoline performance are satisfactory, there's no reason to pay more for octanes than your car needs. On the other hand, if you want something you can get in a more expensive grade of gas, the extra octanes won't do any harm." (Gas For Your Car, Popular Science Monthly, Record 114; see also statements of Professor P. W. Myers, supra at Record 649; Continental Oil Co., Record 437.)

The Ford Motor Co. states that, "Studies have shown that a significant percentage of customers will purchase premium grade fuels for a regular grade engine, whether the engine needs it or not." (Record 170.)

Sun Oil Co., in explaining their marketing techniques through the use of a pump that offers eight blends of gasoline, reveals that the octane rating of gasoline is a matter of some importance to the purchaser of gasoline. "This is the basic philosophy of our custom-blending system. It offers a wide range of choices of octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for that performance." (FTC Industry Conference On Marketing Of Automotive Gasoline, Hearings Before Subcommittee No. 4 on Distribution Problems of the Select Committee on Small Business, House of Representatives, 89th Cong., first session, Vol. 2, p. 1906, Record 157.)

The uneconomic choice of a higher octane gasoline than is needed can be costly according to Senator Proxmire of Wisconsin. "• • • the average consumer does not know how to find out the octane ratings of the various gasoline brands and, thus, is liable

[1] As used herein "Record" refers to the written comments and materials in the public record of this proceeding, and "Tr." refers to the transcript of the public hearing of this proceeding.

to be spending much more money for gasoline than he needs to. This is particularly true for poor people who have to spend a large percentage of their income for gasoline in order to get to work. According to the President of Sun Oil Co., Americans who earn less than $3,000 a year spend an average of 6.2¢ of every dollar on gasoline compared to 1.5¢ for the $15,000 plus income group. A savings of $40 or $50 a year is very important to them." (Record 699.)

Mobil Oil Corp. estimates that savings accrued by purchasing regular in lieu of premium, "* * * for the average motorist would run something less than $30 a year." (Tr. 248.)

A word about the method gasoline refiners use to increase the octane levels of the gasolines to meet the ever increasing need for gasoline to resist "knocking" in automobile engines. "One way to raise a gasoline's octane value is to add tetraethyl lead (TEL)—an industry practice for almost 40 years. Another way is to reshape (the petroleum industry says 'reform') certain of the gasoline molecules into compounds that have a higher octane level. As a rule, most refineries use both methods." (Buying Gasoline, Consumers Report, October 1968, Record 119. See also Popular Science Monthly, Gas For Your Car, Record 111; Changing Times, Gasoline—myth vs. fact, Record 144; American Petroleum Institute and Western Auto Gas Association, Tr. 230; Mobil Oil Corp., Tr. 262. For a description of the lead antiknock compounds used in gasoline and the amounts utilized, see Ethyl Technical Notes, supra at Record 177.)

It is the use of lead in gasoline that has led to allegations and concern that the air pollution problem is aggravated by lead emissions, as well as others, from the exhaust pipes of automobiles.

"Fuels which are either too high or too low in octane tend to create excessive emissions. Fuels with an octane rating lower than required by the vehicle often cause heat buildup in the engine. Higher temperatures and pressures are created within the engine causing increased emissions of oxides of nitrogen (pollutants which contribute to photochemical smog and atmospheric discoloration and are of concern because of health considerations).

"A corollary result of higher combustion temperatures is the phenomenon of 'dieseling' or engine run-on after the ignition is shut off. Dieseling, as well as being a nuisance creates excess emissions of hydrocarbons, a prime ingredient of photochemical smog. We expect the occurrence of dieseling will be reduced as more consumers purchase gasoline of the correct octane.

"Conversely, the use of too high an octane fuel results in excess emissions of lead compounds. This occurs because the average lead content of premium fuels is roughly 25% greater than the average lead content of regular fuels. Thus, some reduction in lead emissions is to be expected from a reduction in the unnecessary use of premium fuels." (Statement of William H. Megonnell, Assistant Commissioner for Standards and Compliance, Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, Record 565.)

Legislation has been introduced by Congressman John Dingell, H.R. 1649, which would require disclosure "on the pump or other dispensing device * * * the minimum octane rating of the fuel and the additives contained therein." (Record 150.)

American autos, trucks, and other vehicles "guzzle" gasoline in staggering quantities. In 1967 the total consumption of gasoline was 77 billion plus gallons; passenger cars alone consumed 55 billion plus gallons. Passenger cars in 1967 consumed an average of 671 gallons of gasoline per vehicle. (Statistical Abstract of the United States, 1969, p. 547.)

In 1967, in excess of 18 billion dollars was spent on gasoline and oil. (Id. at 314.) As of 1963, there were 211,473 gasoline stations in the country. (Id. at 758.)

The above discussion should serve to answer in part the question why the subject is of any import. Octane ratings, the refining processes that are involved to increase octane ratings, the cost impact that gasoline of varying grades has upon individual consumers, the concern of auto manufacturers with "knocking" in engines, and the increasing concern with automobiles and gasolines as they relate to the problem of air pollution, indicate that the subject of gasoline and the octane rating of gasoline is worthy of attention. It is for the above reasons that the Commission considered the more precise question as to whether or not gasoline marketers and refiners should be required to post the octane rating of the gasoline on the dispensing pump.

II. *The Trade Regulation Rule Proceeding.* The public notice published by the Commission on July 30, 1969, focused upon the need or not, to post octane ratings on gasoline pumps. The Commission stated that it had reason to believe:

"(1) Failure by refiners and other marketers of gasoline to identify the gasoline being dispensed through the pumps in terms of research octane ratings may constitute a deception, and an unfair trade practice in that it fails to provide the consumer with a criterion to which he can relate the gasoline with engine requirements of his automobile;

"(2) The failure of refiners and other marketers to disclose the research octane ratings on the gasoline pumps is an unfair practice in that it does not afford to the consumer information with any degree of preciseness as to the range of octane ratings available. In certain instances gasolines are being marketed by the descriptive grade name of 'regular' which are in fact of a lower octane rating than the average acceptable range of 'regular' brands normally marketed with resulting damage to the engines and in some instances the warranties on new cars are not being honored because the car owner unwittingly used a low octane gasoline which he assumed to be a 'regular' blend;

"(3) Refiners and other marketers of gasoline own and/or control the pumps through which gasoline is dispensed at the retail outlet;

"(4) Many consumers are unaware that the engine requirements of their automobile may permit the use of a lower octane gasoline and are paying higher prices needlessly for gasolines of a higher octane rating; and, therefore,

"(5) The practice of failing to disclose the research octane ratings of the gasoline being dispensed from the pump constitutes an unfair method of competition and an unfair or deceptive act or practice, in violation of Section 5 of the Federal Trade Commission Act.

"Accordingly, the Commission therefore proposes the following Trade Regulation Rule:

"In connection with the sale of motor gasoline for general automotive use, in commerce as 'commerce' is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair or deceptive act or practice for the refiners or other marketers who own and/or control the pumps through which motor gasoline is dispensed at the retail outlet to fail to clearly and conspicuously disclose, in a permanent manner on the pumps, the research octane rating or ratings of the motor gasoline being dispensed. (NOTE: For purposes of this Rule, 'research octane rating' shall mean the research octane rating as described in The American Society for Testing Materials (ASTM) 'Specifications for Gasoline' (D439-68T).)"

Interest in the Trade Regulation Rule proceeding was substantial and the response to the invitation for comments on the proposed rule resulted in a public record of written statements, letters, oral testimony, and other materials of three volumes.

Public hearings before a presiding officer appointed by the Commission, Mr. William D. Dixon, Acting Chief, Division of Trade Regulation Rules, began on October 14, 1969 and continued through October 16, 1969. All persons who sought to orally express their views on the proposed rule were able to do so. The 421-page stenographic transcript of the hearings has been made a part of the public record.

III. *In support of the Rule.* The information gathered by virtue of these proceedings substantiates most of the "reasons to believe" in the public Notice. In addition, the proceedings did divulge other information warranting a conclusion that posting of octane ratings on gasoline pumps is necessary. As an example, the relationship of lead to gasoline and its effect on the air pollution problem surfaced unexpectedly during the proceedings and has been highlighted recently by government as well as industry concern.

(1) Failure by refiners and other marketers of gasoline to identify the gasoline being dispensed through the pumps in terms of research octane ratings may constitute a deception and an unfair trade practice in that it fails to provide the consumer with a criterion to which he can relate the gasoline with engine requirements of his automobile.

The lack of information concerning gasoline capability in relation to the engine needs of a particular automobile is described by the Consumers Union representative.

"Consumers Union's interest in gasoline goes back thirty-three years to the very first issue of Consumer Reports, when we reached the conclusion that: 'The average automobile owner wastes two or three cents every time he buys a gallon of gasoline because the gasoline industry forces him to pay for a high antiknock quality which his engine does not need.' Things have changed a little since then, but not much.

"* * * Your proposal will also enable car manufacturers to recommend the proper fuel for their products by octane level rather than by a generalized price level. As a matter of fact, we urge you to supplement your proposal with just such a requirement for these manufacturers." (Statement of William J. Tancig, Chemical Division Head, Consumers Union of U.S., Inc., Record 790, 795.) (For others recognizing expressly or by implication the fact that the automobile owner lacks adequate information necessary to judge what gasoline is best for his particular automobile; see Delaware Valley Dealers Association, Tr. 264; Commonwealth of Virginia, Dept. of Agriculture and Commerce, Record 563; Department of H.E.W., Public Health Service, Record 565; U.S. Department of Interior, Bureau of Mines, Record 855; Statement of Committee of Students, George Washington University Law School, Record 860, 875; Comments of the U.S. Department of Justice, Record 885, 888; Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs, Tr. 21, Record 778; Statement of Honorable John Dingell, House of Representatives, as read by Mr. Gregg Potvin, Tr. 35 and 39; Honorable John A. Ochiogrosso, Commissioner, Office of Consumer Affairs, Nassau County, N.Y., Tr. 42, 49; Sarah H. Newman, National Consumers League, Tr. 58-60; Honorable Joshua Eilberg,

House of Representatives, Tr. 175, 176. See also statement of Kiekhaefer-Mercury Corp. showing the effect that lack of octane posting on marine gasoline pumps has upon marine gasoline engines and their ability to instruct boat owners in the proper use of gasoline. Tr. 69–70, 72.)

One of the industry members, through its own advertising, stresses the need for octane ratings meeting each engine's needs and goes on to advise that an auto owner should: "Select the major brand of gasoline that offers the widest choice of octane ratings. Obviously, you have a better chance of meeting your engine's octane needs if you can choose from several octane ratings rather than from the two or three which most stations offer. Of the major brands, Sunoco offers the widest choice—eight octane levels, about a penny apart in price." After instructing the operator as to the technique of selecting one of the eight selections available on the Sunoco pump, the advertisement concludes, "* * * In any event, what you're doing is carefully customizing gasoline to your engine's needs for peak efficiency and performance at the lowest possible cost." (Popular Mechanics Product Feature, Record 102.)

In documentation submitted to the FTC Conference on Gasoline Marketing, Sun Oil Co., in describing its new gasoline pump which blended various octane levels of gasoline, recognized the need to meet a particular engine's gasoline needs with a particular blend of gasoline.

"This is the basic philosophy of our custom blending system. It offers a wide range of choices of octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for that performance." (FTC Industry Conference on Marketing of Automotive Gasoline, Hearings Supra 1906, Record 157; the need to match a particular gasoline with a particular engine, in terms of octane, is further detailed by Sun Oil Co., Id. at 1909, 1910; Record 160, 161.)

Although standing in opposition to the proposed rule on the grounds that the posting of research octane will not provide the consumer with information as to the range of octane ratings available nor provide the consumer with a criterion with which gasoline can be related to the engine requirements of his automobile, Continental Oil Co. does describe its efforts to educate consumers through a program offering four grades of gasoline.

"In recent years, in order to offer consumers a wider choice of gasoline grades, Continental has developed the so-called 'Four Grade Program' whereby motorists are provided a greater selection of gasoline grades. Advertising of the Four-Grade Program in television commercials, newspapers and trade publications, and in explanatory literature furnished dealers for distribution to the public has been devoted to helping the motorist select the grade of gasoline suitable for his car, avoiding his paying an additional charge for a grade carrying an unnecessarily high octane rating. Some of the advertising has been so specific as to name particular makes of automobiles and to specify the least expensive grade of Conoco gasoline which may be expected to perform satisfactorily in the automobile." (Statement of Continental Oil Co., Record 436 & n. 2.)

What both Sunoco and Conoco appear to be doing is recognizing that there is a need to inform consumers of the way to purchase gasoline so that the gasoline suits the need of each particular engine without at the same time purchasing gasoline in excess of the automobile's needs and incurring extra cost.

One automobile manufacturer, the Ford Motor Co., does indicate in its owner's manual grades of fuel recommended for use. This recommendation is in terms of the words "regular" and "premium" as well as in terms of fuel octane requirements. For example, for the 240 CID–6 engine Ford recommends "Regular, at least 94 octane." (Record 166.) Volkswagen of America, Inc., in its owner's manual informs the owner of the octane rating of gasoline required (Record 302) and endorses steps to enable consumers to make informed choice of fuel. (Record 302.) Similarly, the National Association of Auto Dealers recognizes the value of posting octane ratings to fill a gap in consumer knowledge of gasolines as it relates to his auto's engine. "We agree that the posting of octane ratings may be of benefit to the conscientious consumer, especially if specific engine requirements were supplied by the manufacturers." (Record 848.)

The U.S. Government's purchase specifications for gasoline point up the importance of octane rating in gasoline. That specification points out in no uncertain terms what the General Services Administration considers as the differentiating factor in grades of gasoline.

"1.1 Scope. This specification covers two grades of commercial gasoline for use in automotive gasoline engines under all climatic conditions.

"1.2 Classification.

"1.2.1 Grades. Automotive gasoline covered by this specification provides for two grades of commercial gasoline known as premium and regular. The major difference between these grades is octane number." (Federal Specifications, Gasoline Automotive VV–G–76a, Jan. 7, 1963, Tr. 325, Record 676.)

The representatives of the petroleum industry and others, while not conceding that failure to post octane ratings is or may be a deception, do acknowledge that the octane rating of gasoline in varying degrees is an important feature of gasoline. The Ethyl Corp. points out that: "Of the many individual properties of gasoline that determine the over-all quality of the finished product, antiknock value is one of the most important." (Ethyl Technical Notes, Record 160.) For other statements discussing octane rating as a factor that contributes to gasoline efficiency or cost see Standard Oil Company of California, Record 308, 309; Atlantic Richfield Co., Record 703; A Technical Discussion On Research Octane Number As A Measure Of Fuel Antiknock Performance In Cars, Du Pont, September 1969, Record 469; Professor P. S. Myers, Record 645; Phillips Petroleum Co., Record 728; Sun Oil Co., Record 102, 412, 413; Continental Oil Co., Record 436 and n.2; Humble Oil & Refining Co., Record 569.

Both the oil industry and the Bureau of Mines recognize the importance of octane ratings. The Bureau of Mines, Department of Interior, bi-annually publishes the summarized octane ratings of several thousand gasoline samples which is published as an approximate guide for the petroleum industry. (Consumers Union Statement, Record 791.) The Ethyl Corp. publishes a monthly "Gasoline Quality Survey" which reports the research and motor octane numbers of selected samples of gasoline from different service stations in various cities and makes available the results of their laboratory determined octane ratings. (Statement of Phillips Petroleum Co., Tr. 375, Record 728.)

Another survey testing samples of gasoline for their Research Octane, Motor Octane, and Road Octane numbers is performed by the Du Pont Co. (See excerpts from Du Pont's Road Octane Survey, Northeastern U.S. Gasolines, Summer 1969, Record 734; and Du Pont Road Octane Survey, Western U.S. Gasolines, Summer 1969, Record 243.)

The octane rating of gasoline is related to the problem of knock in the engines of the automobile and the possible damage knock can cause. Automobile manufacturers are concerned that the owner use the gasoline in the automobile with an octane rating adequate to prevent knock. The Ford Motor Co. in its owner's manual recommends the grades of fuel to be used in the various size engines that are installed in Ford cars. Ford then recommends not only the grade of gasoline in terms of regular and premium, but goes on to specify a recommended octane requirement for each engine. (1970 Ford Owner's Manual, p. 43. See also 1970 Registered Owner's Manual Mercury Montego, p. 61; 1970 Torino, Fairlane, Ranchero Owner's Manual, p. 40; 1970 Maverick Owner's Manual, p. 30. Manuals not included in public record.)

A Ford owner conscientiously attempting to follow Ford's recommendations as to the minimum octane gasoline to be used would find it most difficult to ascertain at the gas station whether or not gasolines coming from these pumps were of the minimum octane recommended by Ford Motor Co. This information, except for a few instances, is not readily available to the automobile owner.

Other major American automobile manufacturers, while not listing recommended octane rating, do express their concern with the use of gasoline which has adequate antiknock capabilities, i.e., octane rating.

American Motors recommends gasoline in terms of regular and premium only. The instructions to owners show the concern over knocking because of improper gasoline. "* * * Persistent knock or detonation, however, may indicate the need for a higher grade of antiknock gasoline. Because heavy engine knocking is damaging and constitutes actual 'misuse' under your warranty, check with your dealer immediately, since he will be anxious to have the reason for such knocks determined, assuming they do exist." (1970 Owner's Manual, American Motors, p. 52. Not entered in public record.)

Similarly, Chevrolet advises its automobile purchasers:

"Use of a fuel which is too low in antiknock quality will result in 'spark knock'. Since the antiknock quality of all regular grade or of all premium grade gasolines is not the same and factors such as altitude, terrain and air temperature affect operating efficiency, knocking may result even though you are using the grade of fuel recommended for your engine. If persistent knocking is encountered, it may be necessary to change to a higher grade of gasoline and, if knocking continues, consult your authorized Chevrolet Dealer.

"In any case, continuous or successive knocking may result in engine damage and constitute misuse of the engine for which the Chevrolet Division is not responsible under the terms of the Manufacturers New Vehicle Warranty." ('68 Chevrolet Owner's Manual, p. 46, Record 179.) This caveat is contained also in most of the other General Motors Owner's Manuals.

The unavailability of octane rating in both car owner's manuals and at the point of sale gives rise to a circular sort of argument; the gasoline marketer can plead that there is no point in providing octane information because the owner of the car is not provided with octane rating recommendations by the manufacturer. Similarly, the auto manufacturer pleads the futility of instructing owners as to octane since the information is not available at the point of sale. (See Consumer Reports, Buying Gasoline, Record 803.)

This argument is not insurmountable. A regulation requiring gasoline marketers to post octane ratings on their pumps may signal a beginning of a gradual educational process of consumers concerning octane ratings and how they relate to the engine performance of their automobiles, which in turn may prompt automobile manufacturers to publish recommendations as to what octane gasoline should be used in the automobiles that they market. The providing of complete information to automobile owners as to the octane rating of gasolines marketed and the recommendations by automobile manufacturers as to what octane gasolines should be used in the cars manufactured by them should give rise to an educated selection by consumers of gasoline that meets the needs of their automobiles.

Popular Science magazine lists antiknock behavior as one of the two basic constituents of fuel quality. "The approach is to shop around among the brands and grades of gasoline available in your area, keeping an eye on two basic aspects of fuel quality: antiknock behavior and driveability properties." (Gas For Your Car, Record 114.)

Informed members of the public and representatives of consumer groups appearing at the hearings or submitting statements and consumers writing to the Commission indicate an awareness of the importance of octane ratings.

Senator Proxmire sums up by stating, "I realize that there are other important qualities to gasoline, but the octane rating is the single most important criterion in the quality and price of gasoline." (Tr. 16, Record 700.)

"For a consumer to make a judgment as to whether to buy sub-regular, regular or premium, to buy branded or unbranded, surely knowing the octane rating is the most useful single piece of information that he can be given." (Statement of Representative Dingell as read by Mr. Gregg Potvin, Tr. 35, Record 770.)

For statements from State and Federal agencies outlining the need for the consumer to be provided with octane information as a guide to the educated purchase of gasoline, see the submissions of the Department of Agriculture of the Commonwealth of Virginia, Record 563; U.S. Department of Interior, Bureau of Mines, Record 855; U.S. Department of Justice, Record 885, 887; National Highway Safety Bureau, Department of Transportation, Record 907; Department of Health, Education, and Welfare, P.H.S., Consumer Protection and Environmental Health Service, Record 565.

In Great Britian, a system of gasoline grading is utilized by gasoline marketers under the impetus of British Standard 4040 which was issued on March 16, 1967, and voluntarily adopted by the major oil companies in the United Kingdom. The grading system, posted on pumps, utilizes "star" designators ranging from "2 star" to "5 star" gasoline. The stars indicate the research octane rating of the gasoline ranging from two star for a minimum of 90 Research Octane Number (RON) to five star for a minimum of 100 Research Octane Number (RON). (Statement of R. H. Wilmot, British Embassy, Record 304.)

Mr. Wilmot illustrates the importance of octane ratings: "In our view the Star grading system has been generally successful. It has afforded the motorist a reliable means of estimating the differences between the grades and offered a close enough guide to the motor manufacturers in recommending grades suitable for their engines. We regard the research octane number as the most useful indicator of gasoline quality yet devised (though admittedly it does not indicate all the characteristics of a motor fuel)." (Id. at 306.)

There are several States which have enacted regulations monitoring in some manner the quality of gasoline marketed in those jurisdictions. While none of them require posting of octanes on the pumps, many of them set out octane as one important feature of quality control. (See State of Louisiana, Department of Revenue Statement, Record 82; Florida Gasoline Inspection Law and Rules and Regulations, Record 186, 191, and Monthly Report of Analyses, Inspections and Calibrations March 1968, Florida Department of Agriculture, Record 208; Virginia Gasoline and Motor Fuels Law, Record 230, and Virginia Department of Agriculture Bulletin, Record 236; Statement of Louisiana Oil Marketers Association, Record 267, and Statement of Honorable Joe D. Waggoner, Jr., Member of Congress, Record 840; Statement of Alabama Department of Agriculture and Industries, Record 275; Statement of North Carolina Department of Agriculture, Record 291; Statement of Motor Vehicle Comptroller, State of Mississippi, Record 825; Statement of Department of Revenue, State of Indiana, Record 911, 912, 913, and Statement of Hawaii Department of Agriculture, Record 25, 29; Regulations and Standards for Petroleum Products, State of Georgia, Record 327.

For other statements indicating the importance of octane rating to consumers in their selection of gasolines see statements of Hon. Virginia A. Knauer, Special Assistant to the President for Consumer Affairs, Tr. 20, 25; Hon. John A. Ochlogrosso, supra at Tr. 42, Record 695; National Consumers League, supra at Tr. 60; Kiekhaefer-Mercury, supra at Tr. 72; Delaware Valley Service Station Dealers Association, Record 723; Louisiana Consumers League, Record 83; Consumer Federation of America, Record 320; National Automobile Dealers Association, Record 848; George Washington Law School Student Group, Record 8.

The bulk of the letters received from individuals commenting favorably recognize that posting of octane ratings would provide consumers with information vital to a sound purchase decision of gasoline. Mr. Andrew Stewart writes:

"Octane ratings are clearly the single most significant factor other than price affecting the consumers' choice of which gasoline to purchase. Despite this fact, it is quite difficult for a consumer to obtain any accurate information as to the octane of the gasoline he is purchasing. I have frequently asked gasoline station attendants what the octane rating of gasoline was and have been given both inconsistent answers, and frequently, no answer at all, since this information is not generally provided to gas station attendants * * * the consumer will be enabled to make a more enlightened choice and will obtain better results from his investment in his autoamobile, if he is advised of the octane rating of the gasoline which he purchases." (Record 13.) For other letters expressing the importance of octane rating see Record 7, 11, 18, 19, 21, 22, 56, 58, 66, 67, 75, 92, 281, 807, 819, 822, 831, 847, 895, 897, 898, 899, 900, and 901. (For letters from individuals opposing posting of octane see Record 9 and 10.)

Some of the letters written express consumer frustration with the fact that when queried most gasoline station attendants do not know the octane rating of the gasoline which they are dispensing. Mr. William C. Schmidt in a letter to Senator Proxmire relates his experience:

"With the recent purchase of a new Buick, I decided that it was necessary to determine what the owner's manual meant by the statement, 'Your Buick is designed to operate efficiently on 'Regular' or 'Premium' grade fuels commonly sold * * *.

"From past experience I judged that an octane rating of 95 (Motor Research Method) would be adequate for the compression ratio of my automobile engine. To verify this, I checked with several service stations and was astonished to find that of all those contacted, none even knew the octane ratings of the gasolines they were selling, let alone the gasoline required for my automobile!" (Record 6. For other letters complaining of the unavailability of octane information at the pump see Record 13, 20, 58, 79 and 274.)

Many letters were sent in response to an article which appeared in the April 1970 issue of the Popular Science magazine authored by Mr. Ralph Nader. The article was entitled, Why They Should Tell You The Octane Rating Of The Gasoline You Buy, which supported the concept of posting octane ratings and invited the readers to let the Federal Trade Commission know of their concern for the lack of information as to octane ratings. In the 2 months since the publication of the article the Commission has received 195 letters, and the overwhelming majority of them express support for a regulation requiring the posting of octane ratings of gasoline.

The May 1970 issue of Popular Science carries a rebuttal argument entitled, "There's More To Gasoline Quality Than Octane Rating" authored by Mr. Frank N. Ikard, President, American Petroleum Institute. (Both of these articles and the letters in response are included in the public record.)

The Record shows that the oil industry is intimately familiar with octane ratings; the procurement agencies of the U.S. Government are familiar with octane ratings; the automobile industry is concerned with the very thing octane rating of gasoline is supposed to prevent, i.e., knocking. Consumer periodicals and spokesmen for consumers participating in these proceedings show an awareness of the importance of the octane rating—yet the consumer has no real way of being exposed to this information. The consumer's lack of exposure was neatly put by Consumers Union spokesmen:

"The point needs reiterating. Everybody knows about otcane numbers—everybody except the buying public." (Record 800.)

Furthermore, filling this infomation void would inure to the consumers' advantage.

"Posting octane numbers on the pumps would give drivers a yardstick to measure what they get for their money, other than credit cards, automobile clubs and restrooms. In short, as your present proposal recognizes, and our data confirm, motorists cannot intelligently shop for gasoline on the basis of price without knowing about antiknock property in the form of octane ratings. We view the petroleum industry's withholding of this fundamental information as deceptive and indefensible." (Id. at 795.)

The Record demonstrates the importance of octane ratings to the consumer and the requirements of his automobile and therefore failure of marketers to disclose the octane rating of gasoline is a deception.

(2) The failure of refiners and other marketers to disclose the research octane ratings on the gasoline pumps is an unfair practice in that it does not afford to the consumer information with any degree of preciseness as to the range of octane ratings available.

The Record seems clear enough that there are different ranges of octane ratings available. Many marketers offer a regular (94 octane generally) and a premium (99–100 octane generally). Some offer in addition to regular and premium a middle classification such as Esso which offers in addition to Esso Regular and Esso Extra, Esso Plus. Sunoco offers a variety of eight different selections of gasoline, all varying somewhat in octane rating. Gulf and Sun Oil Co. offer a so-called sub-regular (Gulftane and Sunoco 190) at about 92–93 octane rating. (Consumers Report supra, Record 806.)

The Bureau of Mines Survey of Motor Gasolines, Summer 1968, speaks in terms of five different ranges of gasoline. They are regular price gasoline at an average of 93.8 research octane number; premium price gasoline at an average of 99.9 research octane number; a third grade gasoline with an average 92.5 research octane number; an intermediate grade gasoline with an average research octane number of 96.4; and finally, a super premium gasoline with an average research octane number of 102.4. (Mineral Industry Surveys, U.S. Department of Interior, Bureau of Mines, Petroleum Products Survey No. 58, Motor Gasolines, Summer 1968, p. 4, figures 1 and 2, pp. 33, 34, and 35.)

The Atlantic Richfield Co.'s spokesman notes that most gasolines fall within four ranges. "Nearly all gasoline sold in the United States today as 'regular' has a research octane rating of 92 to 95, while that sold as 'premium' gasoline has a research octane rating of 99 to 101. 'Mid-premium' gasoline generally has a research octane rating of 95.1 to 98.9, and 'sub-regular' a research octane rating of about 89.5 to 91.9." (Record 706.)

Mobil Oil Co. acknowledges a seven point or so spread between their premium and regular gasoline. (Tr. 247.)

Sunoco offers eight different blends of gasoline ranging from an economy gasoline to a super premium. There is a variance in the octane ratings of each grade. "This is the basic philosophy of our custom blending system. It offers a wide range of choices of octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for the performance." (FTC Conference on Automotive Gasoline, House Hearings, supra, Record 157. See also statement of Theodore A. Burtis, Sun Oil Co., Tr. 297.)

Continental Oil Co. offers a "Four Grade Program" providing motorists with a greater selection of gasoline grades and states that its advertising program "* * * has been devoted to helping the motorist select the grade of gasoline suitable for his car, avoiding his paying an additional charge for a grade carrying an unnecessarily high octane rating." (Record 436 & n.2)

Despite the variations in the octane ratings of gasolines marketed by these companies, none of them provide for disclosure of that information to the motorist.

In discussion of the lack of availability of octane information the representative of Cities Service Oil Co. concluded that there is presently no index of octane measurement available to the consumer.

"Mr. Dixon: That brings me back, I think, to the question I was asking Mr. Kane. Without knowing the numbers, octane numbers of gasolines, how does the consumer compare and know what he is comparing? There again, using the apples and pears situation, of comparing Brand A's 94 with Brand B's 96, so that he is essentially comparing different things.

Mr. Rosen: He has no good index.

Mr. Dixon: Does he have any index now?

Mr. Rosen: Not really. The only thing he can rely on, and it is a strong reliance, is the tremendous competitive measures of our industry which never allows anyone, really, to get very far ahead of anyone else * * *" (Tr. 108.)

Further discussion by industry representatives and others illustrated the varying ranges of octane available and the possibility that individuals may be purchasing a higher octane gasoline than is needed for their automobiles. (See testimony of representatives of Cities Service Oil Co., Tr. 109; Atlantic Richfield, Tr. 138; Professor Myers, Tr. 360; Popular Science article, Gas For Your Car, Record 111–113.) Although Mobil Oil Co. and Phillips Petroleum Co. maintain that there is not as much variability in the octane number of gasoline sold as might be thought. (Tr. 248, Record 728.)

Here again, industry is well aware of the range of octane available in gasoline. The automobile industry illustrates its awareness of the available ranges by publication in its owner's manuals of recommendations to use regular or premium, and in the case of Ford Motor Co. to use a grade of not less than a certain research octane number. The automobile owner purchasing gasoline has no effective way of ascertaining what the octane rating is of gasoline being sold at the pump except in a few rare instances where independents may post octane ratings, such as "Scot" and Hess appear to be doing in the Washington area, and some advertising by certain oil companies which alludes to the octane content of their gasoline such as Hess Oil Co. (Record 239 and Sunoco, Record 102.)

The consumer should know the ranges of octane available to meet the operating needs of his car and yet not waste octane by purchasing gasoline with a higher octane rating than is required by his automobile. The consumers should know the ranges of octane available because of the correlation between octane and the price of gasoline. There is no need to pay extra money for extra octanes if the automobile engine does not require high octane gasoline.

Therefore, failure to post octane ratings is unfair because it does not disclose the range of octane ratings available to the consumer.

(2) * * * In certain instances gasolines are being marketed by the descriptive grade name of "regular" which are in fact of a lower octane rating than the average acceptable range of "regular" brands normally marketed with resulting damage to the engines and in some instances the warranties on new cars are not being honored because the car owner unwittingly used a low octane gasoline which he assumed to be a "regular" blend.

There has been little data made available demonstrating any damage to automobile engines by the use of too low an octane gasoline, although there are several sources which have been previously mentioned which note that use of too low an octane gasoline can cause severe damage to an engine such as the article published in the November 1966 edition of Changing Times which stated "There can be risks in trying to 'save' on gas—you can ruin an engine and waste gas in a misdirected attempt to economize." (Record 143) See also Consumer Reports, supra, Record 803; Ethyl Technical Notes, Motor Gasoline Tests and Their Meaning, Record 175; the several citations to the various automobile owner's manuals which point out the engine damage possible because of knocking and the automobile manufacturers' assertion that continued use of gasoline which knocks will be construed as misuse under the automobile warranty. The gasoline companies participating in the proceedings deny that there is any engine damage due to the use of their gasoline. (Mobil Oil, Record 746; Standard Oil of Ohio, Record 317; American Oil Co., Record 262; Gulf Oil Co., Record 359; United Refining Co., Record 96.)

None of the automobile manufacturers confirmed that they had knowledge of cases of engine damage due to use of too low an octane gasoline, nor did they state that they had not honored warranty provisions because of engine damage caused by use of too low an octane gasoline. (See statements of Ford Motor Co., Record 278, 836; American Motors Corp., Record 834; General Motors Corp., Record 841; and Chrysler Corp., Record 843.) Volkswagen did state that it is possible to damage an engine by use of a fuel with too low an octane rating. (Record 302.)

The most that the Record will support is a conclusion that use of fuels of a low octane could cause engine damage if knocking occurs over a consistent period of time. In theory then, as recognized by periodicals, statements of industry representatives and certainly by most of the automobile companies in their owner's manuals, the use of improper grades of gasoline (too low an octane) can cause knocking, and continued use of such gasoline can cause engine damage.

Certainly the automobile industry's concern over the use of gasolines having an octane rating low enough to cause engine knock is manifested by the statements contained in Ford Motor Co.'s owner's manuals specifying the minimum octane-rated gasoline recommended for use with each particular engine manufactured by that company; the statement in General Motors' owner's manuals warning that "* * * continuous or excessive knocking may result in engine damage and constitutes misuse of the engine" which would negate the manufacturers' new vehicle warranty; and a similar caveat contained in the owner's manual published by American Motors. This documentation is sufficient to warrant a conclusion by the Commission that automobile manufacturers are sufficiently concerned with the use of too low an octane gasoline by the owners to post in their manuals such dire warnings concerning the consequences of use of low octane gasoline. Thus, if a particular owner's manual stated that the automobile should use a "good grade regular gasoline" and that such gasoline should be purchased from "reputable suppliers" as is set out in the 1970 Plymouth Fury Operator's Manual, this leaves the owner with the problem of determining what is a "good grade of regular" and just who is a "reputable supplier." Certainly, since the octane rating of gasoline is important in the gasoline/engine relationship, the posting of octane ratings should assist the owner in ascertaining what a good grade of gasoline is—even though it may be conceded that there are other elements necessary to quality gasoline.

Therefore, the failure of refiners to post octane ratings is unfair because (a) it does not provide the consumer with knowledge of the range of octanes available, (b) it could conceivably cause the purchase of gasoline of an octane rating so low as to do damage to an engine, and (c) it does not assist consumers in operating their automobiles in accordance with the recommendations of automobile manufacturers concerning the use of gasoline and could prevent an owner from recovering costs of repairs under his new vehicle warranty provisions.

(3) Refiners and other marketers of gasoline own and/or control the pumps through which gasoline is dispensed at the retail outlet.

The larger major brand refiners and marketers own the pumps of the stations. See testimony of Delaware Valley Dealers Association, Tr. 289.

Testifying on behalf of the Society of Independent Gasoline Marketers of America, Mr. Deer stated that in the case of independent marketers "the ownership of the stations, the ownership of the pumps and ownership of the real estate in most cases, resides with the company and not with the operator." (Tr. 119.)

Continental Oil Co. maintains that "With some variation from company to company, only a minority of the stations through which the major oil companies market are operated by the companies. Most stations owned by the supplying companies are leased

to independent operators. By operation of law, lease of the service station premises vests the operator with dominion and control of the dispensing pumps. Other operators (so-called 'free dealers') own their stations and equipment, while still others are so-called 'jobber dealers' who typically operate stations owned by the distributors under various form of contractual arrangements." (Record 441.)

Standard Oil of California states that some of its stations are owned by the company and consequently the pumps are controlled by the company, and some stations are operated under a lease agreement where the lessee dealer has certain contractual rights to the use of the property. In further discussion, the representative of Standard Oil concluded that under lease situations the oil company would be able to post octane numbers on the pumps if so required. "There is no reason why a marketer of gasoline cannot now put on octane rating if you think that is a valuable promotional tool or helpful to the consumer." (Tr. 94.)

(4) Many consumers are unaware that the engine requirements of their automobile may permit the use of a lower octane gasoline and are paying higher prices needlessly for gasolines of a higher octane rating.

This subject has surfaced tangentially in the discussions of the other premises set out in the public notice; because of its pocket impact it should be highlighted.

There seems to be little doubt that there is a direct relationship between the cost of gasoline and its octane rating. The higher the octane rating of the gasoline the more it costs to refine and the more it costs the consumer.

"As of today what does the car owner know about buying gasoline? * * * One can usually, but not always, assume two things: The 'premium' is higher octane than the 'regular' and has a higher price." (Statement of Consumers Union, Record 790.)

The industry representatives participating in the hearings agree that the cost of gasoline production increases with increase of octane rating. (See testimony of American Petroleum Institute, Tr. 226; Mobil Oil Corp., Tr. 261; Phillips Petroleum Co., Tr. 396; Standard Oil Co. of Ohio, Tr. 412.)

The higher the octane rated the gasoline, the more expensive it is. Does the consuming public know this? Is the consuming public buying more octane than necessary and therefore paying more than necessary? The Record supports an answer in the affirmative.

The Ford Motor Co. states that "Studies have shown that a significant percentage of customers will purchase premium grade fuels for a regular grade engine, whether the engine needs it or not." (Record 170.)

As previously cited, Sun Oil Co. has stated in its advertisements that "Unfortunately many people buy too much octane." (Record 102.) And in a written submission to the FTC Conference on Marketing of Automotive Gasoline, supra, Record 160, it stated "* * * the public traditionally has bought more octane than necessary." In further discussion of the two grade system (premium and regular) Sun Oil Co. concludes that "* * * many automobiles do not need octane as high as that provided by the regular grade. This is particularly true in the east where regular grades are about one octane higher than the nationwide average. A lower octane fuel would be entirely adequate for a sizeable segment of the automobile population. This is actually being done in the southwest and west where the regular grades are significantly lower in octane. Second, automobiles which need higher octane than that provided by the regular grades have to jump to the premium in the two grade system. This results in a sizeable area of excess octane quality and, in our opinion, is a real deficiency of the two grade system." (Record 160.)

Several of the witnesses appearing in opposition to the proposed rule do concede that some customers probably do buy a higher octane gasoline than is required for their automobile, although they do not know just how many purchase or how much extra octanes are purchased. (See Mobil Oil Corp., Tr. 261; Phillips Petroleum, Tr. 395; Cities Service Oil Co. testimony, Tr. 110; Atlantic Richfield testimony, Tr. 137; Sun Oil Co. testimony, Tr. 308; Professor Myers' testimony, Tr. 360.)

Many of the parties supporting the promulgation of a rule requiring octane posting also state that in their opinion many people unknowingly buy higher octane than is necessary. (See statements of Senator Proxmire, Tr. 12; see also Congressman Dingell's statement, Tr. 40; Consumers Union statement, Tr. 197; Delaware Valley Service Station Dealers Association, Tr. 288; Department of Justice statement, Record 890; statement of G. W. Law School students, Record 876.)

Since the higher octane gasolines (premiums) are more expensive and it's quite probable that some or many buy a gasoline with a higher octane rating than their automobiles demand, a proper selection of the correct octane rated gasoline should in most cases result in a savings to the consumer. This is particularly important to the low income user of gasoline.

"* * * the average consumer does not know how to find out the octane ratings of the various gasoline brands and, thus, is liable to be spending much more money for gasoline than he needs to. This is particularly true for poor people who have to spend a large percentage of their income for gasoline in order to get to work. According to the President of Sun Oil Company, Americans who earn less than $3,000 a year spend an average of 6.2 cents of every dollar on gasoline compared to 1.5 cents for the $15,000 plus income group. A savings of $40 or $50 a year is very important to them." (Senator Proxmire, Tr. 14.)

Representative Joshua Eilberg estimates a possible savings in the amount of $50 per year. (Tr. 176.)

The Consumers Union in discussing differences in gasoline prices (even though the octane ratings may be similar) illustrates how savings can be effected through selected price comparisons of gasoline.

"Price, however, is something else. Prices for a given designation of the majors differ from city to city, differ within the same city, differ from the independents' prices and change seasonally. Obviously, you must shop around if you're interested in price. We found that, on the average, buying a major brand at a cut rate station will save you about 1.5 cents per gallon over the price for the same brand at a regular station, regardless of designation. And if you can switch from a branded gasoline sold at a regular price to an independent gasoline sold cut rate you can save about 4 cents per gallon. That adds up to $28 a year for 700 gallons, which is about the national average gas consumption per car." (Record 805.) Similar savings could be effected by the auto owner who changes from a premium gasoline to a lower priced regular if he was made aware that his auto needed only the lower octane rated regular gasoline rather than the higher octane rated premium that he is presently paying 3 cents to 4 cents more per gallon.

Mobil Oil Corp. estimates that savings accrued by purchasing regular (low octane) in lieu of premium (high octane) "* * * would run something less than $30 a year." (Tr. 248.)

Any estimates of savings to the individual consumer of gasoline, considering the number of auto owners, the different brands and grades, and the octane ratings that may appear on pumps, is highly speculative. But what is important is the fact that savings can reasonably be predicted to occur simply because it has been established that people buy too high an octane rated gasoline. Once educated to the fact that many cars need not use premiums (high octane) it seems reasonable to conclude that savings through purchases of regulars rather than premiums, or middle ranges rather than premiums, will eventuate. Even if this did not come to pass, the consumer is entitled to have octane information made available to him, regardless of the amount of money saved. The information is useful to the car owner. It is needed in order that he satisfy his engine needs and yet not "overkill" in the use of gasoline. Postings on pumps should prompt automobile manufacturers to educate automobile owners as to gasoline/engine requirements of the cars they produce and market.

The consumers' dilemma is thus:

"Gasoline is an anonymous product to the consumer. He knows only that he is buying a petroleum product, that it has been transformed into gasoline at a refinery, that it is the fuel required for his automobile, and that it may be procured at his local gasoline station. The consumer never sees the gasoline he purchases. He has no idea of what is in it. He has no way to objectively distinguish one gasoline from another. He is unable to distinguish one quality claim from another. Finally, he lacks the sophisticated knowledge necessary to determine if his engine's fuel requirements are being satisfied. But he must use gasoline. He accepts the maze." (G. W. Law School student statement, Record 860.)

The first step out of this maze is succinctly described by W. C. Tancig:

"Posting octane numbers on the pumps would give drivers a yardstick to measure what they get for their money, other than credit cards, automobile clubs and rest rooms. In short, as your present proposal recognizes, and our data confirm, motorists cannot intelligently shop for gasoline on the basis of price without knowing about antiknock property in the form of octane ratings. We view the industry's withholding of this fundamental information as deceptive and indefensible.

"* * * Your proposal will also enable car manufacturers to recommend the proper fuel for their products by octane level rather than by a generalized price level. As a matter of fact, we urge you to supplement your proposal with just such a requirement for these manufacturers." (Consumers Union, Record 795.)

IV. *In opposition to the Proposed Rule.* 1. Probably the most frequent argument posed by opponents to the proposed rule is that the posting of research octane numbers creates the impression that octane rating is the only quality feature of gasoline and therefore is misleading.

"I believe this testimony will show that posting of research octane numbers could mislead the motorist into buying a product that may lack essential characteristics of a good gasoline. These characteristics include quick starting, dependable acceleration, cleanliness, and good mileage. Undue emphasis on Research Octane ratings could delude the consumer into believing that gasoline with a higher posting would perform better, which may not be the case.

"Aggressive marketing competition among oil companies has produced the high quality gasolines that motorists expect and receive today. The posting of octane numbers would tend to minimize competitive efforts to maintain and improve overall quality, and

place undue emphasis on Research Octane rating, in itself an inadequate total performance criterion.

"* * * Even if antiknock performance could be accurately predicted by some yet-to-be devised laboratory octane test, it would not guarantee the consumer top engine performance. There are numerous characteristics essential in judging the quality and performance of a motor fuel."

"(1) Proper fuel vaporization at low temperature. This feature insures quick engine starting in cold weather, without vapor locks.

"(2) The optimum degree of fuel vaporization as the engine warms up and temperatures rise. This insures fast warm up, smooth acceleration, and uniform fuel distribution among the engines' cylinders.

"(3) Careful control of high-boiling fuel hydrocarbons. Good fuel distribution and freedom from excessive crankcase dilution and deposits are insured when the amount of very high-boiling hydrocarbons is kept to a minimum.

"(4) Proper relationship between vaporization and the altitude and climate where the fuel is to be used. This feature also prevents vapor lock, the result of fuel boiling in the fuel pump and fuel line.

"(5) Low gum content. This prevents valve sticking, carburetor difficulties, and gum deposits in the engine and intake manifold.

"(6) Low sulphur content. This minimizes corrosion and reduces atmospheric pollutants.

"(7) Good storage stability. This keeps gum from forming.

"All of these characteristics are essential to a high performance fuel; none of them depends on a gasoline Research Octane rating." (Statement of Francis C. Moriarity, American Petroleum Institute and Western Oil and Gas Association, Record 454 and 456–457. For other statements pointing out that octane is not the sole indicia of quality in gasoline and/or posting of octane numbers would mislead, see statements of Standard Oil Co. of California, Record 308; Cities Service Oil Co., Record 354; Society of Independent Gasoline Marketers of America, hereinafter referred to as SIGMA, Record 430; Atlantic Richfield Co., Record 703; National Petroleum Refiners Association, Record 755; Mobil Oil Corp., Record 737; Sun Oil Co., Record 411, 416 and 856; American Petroleum Refiners Association, Record 656 and 661; Professors P. S. Myers and O. A. Uyehara, Record 644, 650; Phillips Petroleum Co., Record 728, 729; Standard Oil Co. of Ohio, Record 313, 314; J & L Oil Co., Inc., Record 57; APCO Oil Corp., Record 62; Sunland Refining Co., Record 72; Louisiana Department of Revenue, Record 82; Plateau, Inc., Record 86a; Kendall Refining Co., Record 87; Council of Safety Supervisors, Vermont Truck & Bus Association, Record 93; United Refining Co., Record 95; Mohawk Petroleum Corp., Inc., Record 240; American Oil Co., Record 258; La Gloria Oil and Gas Co., Record 269; California Department of Agriculture, Record 277; North Carolina Department of Agriculture, Record 291; Union Oil Co., Record 293, 296; Michigan Petroleum Association, Record 300; North Carolina Oil Jobbers Association, Record 349; Gulf Oil Co., Record 357, 360; Shell Oil Co., Record 361, 363; Continental Oil Co., Record 434, 437; Rock Island Refining Corp., Record 447; SYMPA, Record 564; Humble Oil & Refining Co., Record 568; Georgia Association of Petroleum Retailers, Record 325, 336; Kentucky Petroleum Marketers Association, Record 813; Illinois Petroleum Marketers Association, Record 852; Fuel Merchants Association of New Jersey, Record 827; Texaco, Inc., Record 837; George C. Stafford & Sons, Record 839; State of Indiana Department of Revenue, Record 911.)

2. A further refinement of the argument that postings mislead consumers is that the posting of octane ratings on gasoline pumps as a result of a Federal agency regulation "* * * would be tantamount to giving a government stamp of approval to octane as the sole, or primary, index of gasoline quality." (Mobil Oil Corp., Record 745; see also statements of Professors Myers and Uyehara, Record 650; Standard Oil Co. of Ohio, Record 316; and Shell Oil Co., Record 362.)

The Federal Specifications for the purchase of automotive gasoline, VV-G-76a, January 7, 1963, is cited to illustrate that gasoline contains many quality features. "The department of Government responsible for purchasing untold millions of dollars of fuel for engines from jet to diesel learned many years ago that not only is there no single standard for gasoline, but the variables necessary to assure high quality performance were so numerous and intricately related that they issued a specification requirement composed of an unbelievable number of factors which must be met. This specification VV-G-76a * * *, and its complexity requirements is proof sufficient that research octane number in no manner is an indice of over-all quality." (American Petroleum Refiner's Association, Tr. 325.)

3. It is pointed out that each automobile has different engine characteristics and because of this has different octane needs.

"Any two automobiles of identical make and model may vary as much as six to eight octane numbers in the gasoline characteristics required to prevent knocking. Also, a very high compression engine needs one kind of gasoline. The same gasoline may not be needed in an engine of lower compression which may operate efficiently on a gasoline of different characteristics—not an inferior gasoline, but a different gasoline. The motorist finds out what is right for his car by its performance as he drives it with one gasoline or another in the tank. It is his driving experiences, and not the posting of octanes, that will inform the driver what gasoline his car should use." (Statement of Standard Oil of California, Record 307; see also Cities Service Oil Co., Record 352; SIGMA, Record 431; American Petroleum Institute, Record 459, 470; Mobil Oil Corp., Record 740; William A. Fluhr, Inc., Record 787; Sun Oil Co., Record 412; Professors Myers & Uyehara, Record 648; Standard Oil Co. of Ohio, Record 317; APCO Oil Corp., Record 62; Plateau, Inc., Record 86a; Council of Safety Supervisors, Vermont Truck & Bus Association, Record 93; Mohawk Petroleum Corp., Inc., Record 241; American Oil Co., Record 256; Union Oil Co., Record 295; Michigan Petroleum Association, Record 300; Gulf Oil Co., Record 358; Continental Oil Co., Record 437; Humble Oil & Refining Co., Record 575; Fuel Merchants Association of New Jersey, Record 828.)

4. It is forcefully argued that the research octane number method of evaluating gasolines antiknock capabilities is not an accurate measure, that the motor method is no more effective and that the road method is the best of the three but not in itself a totally accurate gauge.

"Our belief that octane posting would not serve to inform the motorist has a sound technical basis. The technical problems arise from the fact that there are three methods of measuring the octane of automotive gasoline: the Research method and the Motor method, both of which are performed in the laboratory, and the Road rating approach, which is carried out in a multicylinder automobile engine under highway operating conditions. Since the Road method most closely simulates actual car operation, the Road rating is a better indicator of the gasoline antiknock performance to be expected. The octane numbers derived for the same gasoline by each of the three methods, however, will vary markedly.

"As the American Society for Testing and Materials (ASTM) explains it:

"At the present time, there is no completely satisfactory way of translating Motor and Research octane numbers into terms of a rating for all vehicles on the road. Correlations of laboratory ratings with Road ratings have been developed, but at best such correlations represent only the average result obtained for a limited number of vehicles when operated under prescribed conditions. (1960 ASTM Standard, Part 17, page 172.)

"Research octane, the one proposed for posting in the FTC rule, is least related of all the methods to actual car performance. Research octane is a laboratory test measured on a single cylinder engine which is not like the modern six or eight cylinder automobile engines. The Research method was designed as a successor to the Motor laboratory method to accommodate the higher octane fuels developed in the 1930's. The Research method, in combination with the Motor method, is in use by oil companies as a means of monitoring the octane level of refinery streams and also finished gasoline products. But it is only of value in these instances because the limitations of the data are understood by the people who use them, and the Research number is only one of the many measurements used by refiners. They have also measured the Road octane, and know the relationship between the Research and Motor measurements and actual performance for a particular composition of gasoline. The Research method alone is not a satisfactory method of comparing the road performance of several gasolines." (Sun Oil Co. Statement, Record 413, 414.) For other statements indicating that Research octane rating is an inadequate measure of gasoline quality see Standard Oil Co. of California, Tr. 78; Union Oil Co., Record 294–295; Cities Service Oil Co., Record 352; SIGMA, Record 431; Ethyl Corp., Record 423, 426; American Petroleum Institute, Record 455, 463; Mobil Oil Corp., Record 739; American Petroleum Refiners Association, Record 656; Professors Myers & Uyehara, Record 648; Phillips Petroleum Co., Record 729; Standard Oil Co. of Ohio, Record 319; Department of Agriculture, State of Hawaii, Record 29; Kendall Refining Co., Record 87; Mohawk Petroleum Corp., Record 240; American Oil Co., Record 256, 258; Michigan Petroleum Association, Record 300; North Carolina Oil Jobbers Association, Record 349; Gulf Oil Co., Record 358; Shell Oil Co., Record 362; Continental Oil Co., Record 440; Humble Oil & Refining Co., Record 573; Empire State Petroleum Association, Inc., Record 850; Texaco, Inc., Record 837.)

Similarly this was the thread of the argument presented by the Ethyl Corp. in the demonstration before the Commission of its Crosley engine with four different fuel supply devices which supplied to the engine two different brands of "premium" gasoline and two different brands of "regular" gasoline, all having similar research octane numbers. Ethyl after demonstrating that the four gasolines when burned in the engine have different "knock" propensities maintains that the necessary conclusion that must follow is that gasolines of the same RON will react differently in any given engine and therefore "the use of research octane number alone as the index of fuel quality could be misleading to the motoring public." (Record 426.) (For similar observations concerning the incongruities between the Research Octane Method and the Road Method see Mobil Oil Corp., Record 739; Sun Oil Co., Record 413–414; American Petroleum Refiners Association, Record 663, 664; Standard Oil Co. of Ohio, Tr. 495; Mohawk Petroleum Co.,

Record 241; Union Oil Co., Record 294; Humble Oil & Refining Co., Record 575, 604.)

5. The result of posting of octane numbers on gasoline pumps will be octane wars. So state industry members in opposition to the proposed rule.

"The proposed Rule will tend to lead the public to believe that a gasoline with a higher research octane rating will in all or almost all cases fill their needs better than a lower research octane gasoline.

"* * * In addition, by overemphasizing research octane the Rule might upset the widespread practice of selling lower octane gasoline in the Rocky Mountain States than in other parts of the country. Since octane requirements decrease at higher altitudes, this practice does not affect gasoline performance. However, if the proposed Rule with its emphasis on research octane is put into effect, there may well be the tendency to increase the research octane of gasoline sold in the Rocky Mountain States to levels prevailing in other parts of the country.

"Thus by overemphasizing the importance of research octane the proposed Rule may well cause some marketers to add certain components to their gasoline in order to raise research octane levels and thus gain a competitive advantage. Competitive factors could then force other marketers to follow this practice. Most elements of gasoline quality would not be enhanced by this increase in research octane ratings. Thus the Rule may change the buying habits of the public without bringing them any substantial benefit." (Statement of Atlantic Richfield Co., Record 704–705.) Other participants who fear that octane wars will result from posting and the public placing too much emphasis on the value of octane ratings include SIGMA, Record 431; National Petroleum Refiners Association, Record 757; Mobil Oil Corp., Record 742; Sun Oil Co., Record 411; Professors Myers and Uyehara, Record 651; Phillips Petroleum Co., Tr. 386; Standard Oil of Ohio, Tr. 412, Record 316; American Oil Co., Record 263; Gulf Oil Co., Record 360; Shell Oil Co., Record 363; Continental Oil Co., Record 440; Rock Island Refining Corp., Record 448; Humble Oil & Refining Co., Record 577–578; Kentucky Petroleum Marketers Association, Record 814; Fuel Merchants Association of New Jersey, Record 828.

Another member of the petroleum industry believes that with minimum posting requirements, most manufacturers will not race to increase octanes, but rather will tend to produce gasoline with the minimum amount of octane rating possible. (American Petroleum Institute, Tr. 218.)

6. Posting of octane ratings will inhibit research, so states Standard Oil of California.

"As the President of a research company which has a long record of product innovation and improvements over the years, it would be particularly distressing to see this happen. It would arise from the fact that if research octane postings were required, then, of course, the target that would be forced on a manufacturer and on the research group backing them up, would be to try to obtain that research number at the lowest possible cost." (Tr. 81, 82.)

"The emphasis given research octane by the Commission's proposed trade regulation rule could create an artificial barrier to improvement; for gaining public acceptance of some new ingredient might be very difficult if the necessity of posting the research octane rating induced the erroneous impression that this new gasoline was not really any different from other products bearing the same research octane rating." (Standard Oil Co. of California, Record 308.) For expressions of similar sentiments see Atlantic Richfield, Record 707; Phillips Petroleum Co., Tr. 387; and Standard Oil Co. of Ohio, Record 316; Kentucky Petroleum Marketers Association, Record 815.)

7. Since the octane requirements of automobile engines differ in certain parts of the country, the motorist driving from one area to another will be confused by the different octane ratings appearing on the pumps. This argument is presented as another reason why posting of octane ratings will confuse and therefore should not be required.

"If octane postings were required, a consumer would find that the same brand of premium gasoline with a posting of 100 octane in New York City might have a posting of 97 octane in Denver, Colo., and yet provide equivalent antiknock performance in both areas. However, with octane posting, the motorist would not know that the gasolines—despite such differences in octane ratings—were made to perform properly and satisfactorily under different temperature and altitude conditions. In such instances, posting of octane numbers on gasoline pumps would not only not help the consumer but would in fact, serve to confuse him. And it would certainly not be in the consumer's interest for him to purchase, unnecessarily, a higher octane number gasoline in high-altitude areas." (American Petroleum Institute, Western Oil and Gas Association, Record 458–459. See also Atlantic Richfield Co., Record 704, Tr. 137, 138; American Petroleum Refiners Association, Record 338, 657; APCO Oil Corp., Record 62; Plateau Inc., Record 86a; Motor Transport Association of New Hampshire, Record 91; Mohawk Petroleum Corp., Inc., Record 241; American Oil Co., Record 257; Standard Oil of California, Record 309.)

8. Industry members point out that under the present system of gasoline marketing if an automobile knocks, or the customer is otherwise unhappy with gasoline performance, he will buy another brand or grade of gasoline. (See statement of Standard Oil of California, Tr. 81; Cities Service Oil Co., Tr. 109; Mobil Oil Corp., Tr. 247, Record 741; La Gloria Oil & Gas Co., Record 270; Union Oil Co., Record 295; Gulf Oil Co., Record 358–359; Rock Island Refining Corp., Record 447; Humble Oil & Refining Co., Record 576, 577; Empire State Petroleum Association, Record 850; Vermont Petroleum Inc., Record 826; Vermont State Farm Bureau, Record 830; George C. Stafford & Sons, Inc., Record 839.)

As a companion to the above argument is the position that the present system of identifying gasoline qualities and capabilities provides adequate information to the consumer.

"In Atlantic Richfield's view, the maintenance of this basic terminology—'regular' and 'premium'—is more meaningful and more useful to consumers than would be a requirement that gasoline be identified by research octane ratings. Should gasoline marketers be required to post the actual research octane rating at the pump, this, as a matter of consumer psychology, will influence consumers to purchase the highest rated gasolines." (Record 706. See also statements of American Petroleum Institute, and Western Auto Gas Association, Tr. 217; Union Oil Co., Record 293; Continental Oil Co., Record 436 & N.2; Humble Oil & Refining Co., Record 576.)

9. The smaller independent refiners argue that posting of research octane ratings on pumps will work a hardship upon them. It is their insistence that many of the small refiners, because of the crude oil they utilize, are able to refine gasoline that may have an excellent "Road Octane Rating" but have a relatively unimpressive Research Octane Rating.

"There is no need nor justification for these small refiners to produce a product with an unnecessarily high Research Octane number when they are already making a higher performance gasoline than the high Research Octane number gasoline marketed by intermediate and major refiners. As a documented example, there is attached a specification sheet of Famariss Pool gasoline for September. It shows our premium grade gasoline tests.

97.9 Research Octane
92.6 Motor Octane
and
101.6 Road Octane

Under your proposed regulation of pump posting we would flunk on the Research Octane which is the number the consumers would see.

"What the consumer would not see is that he's passing up the whipping cream to get skim milk because in the same market highly advertised gasolines have been tested at

99.9 Research
92.2 Motor
and
98.2 Road Octane

"What is true of Famariss gasoline is typical of the gasoline of most small refiners." (American Petroleum Refiners Association, Record 663–664; see also statements of Mohawk Petroleum Corp., Inc., Record 241; Kendall Refining Co., Record 87.)

This point is corroborated by the Du Pont Technical Discussion On Research Octane Number As A Measure Of Fuel Antiknock Performance In Cars. "Here again, it will be observed that the road antiknock quality of gasoline marketed by these small companies is fully competitive with that of the major companies, despite the fact that the Research Octane Numbers are appreciably lower." (Record 476.)

10. In the view of independent marketers the worrisome feature of mandatory postings is that they have no control over the octane rating of the gasoline that they purchase from refineries or middlemen.

"* * * SIGMA is most seriously concerned with the effect the proposed rule could have upon its efforts to remain competitive in the retailing industry. As already noted, SIGMA members are almost wholly dependent upon major oil companies for product supply. Such dependence means that SIGMA members have no control over the octane ratings of gasoline purchased from the majors, and no means of determining octane ratings except to rely upon rating data furnished by the supplier. The problem is greatly compounded by the fact that an individual independent marketer often must look to various major brand sources for his product supply. If the Commission adopts a rule requiring the posting of octane ratings, which we oppose for reasons already stated, such a rule must contain a provision permitting independent marketers to rely on octane ratings furnished by the refiner * * *" (Society of Independent Gasoline Marketers, Record 432. See also statements of Mohawk Petroleum Corp., Inc., Record 241; and comments of Department of Justice, Record 891–892.)

Conversely, the independent refiners are also concerned over the fact that once the gasoline leaves the refinery it may pass through several parties prior to sale and the refiner may have no control over the ultimate octane number of the gasoline at the point of sale. "Since the independent refiner markets his gasoline through many different channels, a particularly worrisome aspect of the proposed compulsory posting Rule, concerns the amount of control over the exact research octane and the problems involved in maintaining the same octane rating from the refinery to the gasoline pump. The independent refiner can accurately label the octane of

the gasoline at his refinery and at his own retail outlets, but would have no way of controlling the quality of the product sold at the refinery after it has left his plant and is subject to subsequent handling which could affect the octane rating. This could be particularly troublesome in cases where the gasoline is handled by different parties, i.e., jobbers, transporters, etc., before reaching the retail marketers." (Statement of National Petroleum Refiners Association, Record 756–757; see also statement of Sunland Refining Corp., Record 72.)

11. It has been suggested by some that the posting of octane ratings of gasoline on pumps will tend to divorce consumer purchase decisions from brand names. Shell Oil Co. asks: "* * * Is the Rule a measure to reduce consumer identification of performance satisfaction with a particular brand? If so, why? There is nothing undesirable about consumer identification of superior performance with a particular brand * * *" (Record 363.)

Similarly, a fear of brand name erosion because of octane posting was voiced by the Georgia Association of Petroleum Retailers, Inc. "* * * The ability of the unbranded dealer to purchase gasoline on a competitive bid basis would be an unfair competitive advantage over branded dealers who are locked-in under short term leases with a landlord-supplier should you adopt the proposed rules which we believe will result in consumers disregard of brand names and other qualities by making selection on octane rating only." (Record 326.) See also comments of the representative of Phillips Petroleum Co., Tr. 392.

12. Opponents point out that gasoline companies presently must adhere to stringent State laws which set out precise specifications for gasoline quality and therefore these State requirements adequately protect the consumer.

"State law provides necessary safeguards for gasoline products as to octane and certain other qualities and thus protects the consumer from deception as to quality meeting the requirement for today's automobiles." (Georgia Association of Petroleum Retailers, Inc., Record 324; see also statement of APCO Oil Corp., Record 62; State of Louisiana, Department of Revenue, Record 82; Louisiana Oil Marketers Association, Record 267; Alabama Department of Agriculture and Industries, Record 275; Crown Central Petroleum Corp., Record 347; Continental Oil Co., Record 441, 444; Mississippi Motor Vehicle Comptroller, Record 825; Honorable Joe D. Waggonner, Jr., Member of Congress, Record 840.)

13. It is pointed out that there is really little variation in the octane ratings of competing gasolines today and therefore the motorist is capable of judging for himself the gasoline he needs under the present grading system. See statement of Atlantic Richfield, Record 706; Phillips Petroleum Co., Record 728; and Humble Oil & Refining Co., Record 576.

V. *Suggested alternatives and modifications to the proposed rule.* 1. Parties appearing in support as well as in opposition to the proposed Rule suggest that the Rule should require the marketers to post minimum octane ratings on the pump, i.e., state that the gasoline being dispensed from the pump is at least 90 octane, rather than requiring a marketer to state that the gasoline is precisely 90 octane at any time it is sold.

"* * * the proposed regulation would appear to impose unnecessarily difficult requirements in its direction that exact octane ratings be posted on dispensing pumps. This, again, would impose considerable burden on independent marketers whose supplies are derived from different manufacturers, in lots of different octane rating, which are inexactly mixed in dispensing tanks. In meeting this situation, or that created by evaporation of the more volatile components with consequential changes in actual rating, we recommend that the proposed regulation be amended to require only specification of the minimum octane rating of the gasolines included in the mix. Absent anticompetitive agreement among retailers or suppliers to maintain uniform octane postings, it would seem inevitable that the pressures of competition would shortly require that the minimum ratings posted be as near as possible to the actual." (Comments of the Department of Justice, Record 892–893; see also Statements of Consumers Union, Record 799; Crown Central Petroleum Corp., Record 347; Department of Transportation, Record 907. The Petroleum Products Division of the Louisiana Department of Revenue recommends the minimum postings of the base stocks of gasoline being dispensed from blend-o-matic pumps. Record 903.)

2. It has been suggested that the proposed rule be enlarged in scope so as to require the automobile industry to specify in their owner's manuals the octane rating of the gasoline that they recommend for their automobiles. See statements of Consumers Union, Record 795; Hon. John A. Ochiogrosso, Record 696.

3. The Commissioner of Consumer Affairs of Nassau County also recommends that federal financial assistance be afforded to local offices of consumer protection. (Record 696.)

4. The representatives of Kiekhaefer Mercury Co., a builder of motorboat propulsion systems recommends that the rule be expanded to cover all internal combustion engines, and that "all engine builders" as well as marketers be required to post octane information relating to the engines they manufacture. (See Record 685 and Tr. 66.) Their point is that in internal combustion engines used in outboard motors, quite often low octane gasoline (60–65) is sold as Marine White, and when used causes severe damage to such engines. Therefore posting of the octane rating should be required on marine pumps and that manufacturers of engines be required to recommend gasoline for their engines in terms of octane rather than the general terms "regular" or "premium."

5. The George Washington University Student Group requests that "the Federal Trade Commission re-examine the gasoline industry practices of dual distribution and exchange agreements taking into full account the deceptive effects of these practices upon the consumer." (Record 883.)

6. The Atlantic Richfield Co. suggests, "* * * that the appropriate rule should require that gasoline being offered for sale at the retail level be identified by trade name or other means as 'premium,' 'mid-premium,' 'regular,' or 'sub-regular' and that the rule or guide define each of these grades of gasoline by prescribing its minimum research octane rating. It is our further suggestion that the minimum octane ratings be set at 99 for 'premium,' 92 for 'regular,' 95 for 'mid-premium' and 89.5 for 'sub-regular.'" (Record p. 709.)

The proposal of Atlantic Richfield would not, however, require that octane ratings be posted on the pump. (Tr. 144–145.)

7. The Sun Oil Co. also suggests as an alternative to posting of octane ratings that "The Trade Regulation Rule should create a graded system registering fuels based on Road octane number, with a minimum of five categories to accommodate the five grades of gasoline most commonly available today: subregular, regular, intermediate, premium and super premium.

"* * * We believe that by using categories, rather than specific numbers, the danger of misleading the consumer by playing up insignificant numerical differences, the general confusion over rating methods, and the potential disagreements over the accuracy of posted numbers would be avoided." (Record 416.)

Sun Oil believes that "Posting categories instead of numbers would, of course, protect the motorist from attaching undue importance to small numerical differences." (Record 856.) Sun Oil Co.'s proposal evidently does not contemplate the posting of octane numbers on the pumps, but rather relying on grades as are presently used. (Tr. 309.)

The Crown Central Petroleum Corp. suggests as an alternative to posting that refiners file with the FTC a certification that their grades of gasoline meet certain minimum octane ratings. (Record 347, 348.)

8. Dr. Myers of the University of Wisconsin suggests (Record 652) that the Commission "* * * ask some prestigious and qualified body, such as the National Academy of Engineering or the Society of Automotive Engineers—is there a single unique quality criterion for gasoline. If there is, it should be made known to the customer."

Dr. Myers further suggests that the Commission "* * * see that information about the quality characteristics of gasoline (including knock) be prepared by a knowledgeable and impeccable group, such as the National Academy of Engineering or The Society of Automotive Engineers, expressed in simple laymen terms and made available to the general public." (Record 653. See also Sun Oil statement, Record 417.)

9. The Director of The Division of Weights and Measures, Hawaii Department of Agriculture, suggests that the Commission rather than utilize Research Octane Ratings, use a more meaningful criteria that they are presently in the process of developing in the State of Hawaii (Record 26). The "Performance Index" as contemplated by The Hawaiian Department of Weights and Measures would include factors other than Research Octane Numbers above. It is also suggested that if the Commission does promulgate a Trade Regulation Rule such a rule be made inapplicable to states having a "value indicator law." (Record 23.)

VI. *Summary and conclusions.* On the basis of the Record of the Trade Regulation Rule proceeding, including those portions referred to in the preceding paragraphs, the Commission has concluded that the issuance of a Trade Regulation Rule requiring the posting of minimum research octane ratings on gasoline dispensing pumps is required by that Record and is in the public interest.

The public Record has demonstrated:

1. A relationship between the cost of gasoline and its octane rating, and that as a general rule, the higher the octane rating of the gasoline the higher the cost per gallon, and that there is a varying range of gasolines with different octane ratings available;

2. A relationship exists between the octane rating of the gasoline and the requirements of the automobile engine, and that different engines need differing octane rated gasolines;

3. The great majority of marketers of gasoline do not disclose to the consumer the octane rating of the gasoline being sold at the pump in a readily available manner;

4. Consequently, consumers are unaware that octane requirements of their particular automobile may permit the use of a gasoline with a lower octane rating, and as a result are paying higher prices needlessly for gasolines of a higher octane rating. Furthermore, the use of a gasoline which is either too high or too low in octane rating for that particular automobile tends to create excessive emissions which contribute to air pollution;

5. Motorists find it difficult to relate the octane needs of their automobile engines to the octane ratings of the gasolines available for sale. This is particularly true of automobile owners who must follow the requirements set out in their owner's manuals as

to gasoline use in order to comply with the "new car" warranty provisions of many automobile manufacturers. In some instances it is possible that through ignorance on the part of a motorist the use of too low an octane gasoline for an extended period of time could cause severe engine damage.

Therefore, on the basis of its accumulated knowledge and experience and the Record in this proceeding, the Commission concludes that the failure on the part of marketers of gasoline for general automotive use to affirmatively disclose the research octane rating of the gasoline to the consumer at the point of sale in a readily accessible manner constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act.

It has been forcefully argued that there are many components to gasoline makeup, in addition to the octane rating, which contribute to the overall quality and efficiency of gasoline, and posting of octane ratings on gasoline pumps will lead the consumer to conclude that the octane rating of gasoline is the only indicia of quality. It is further argued that the requirement by a Federal agency mandating the posting of octane ratings on gasoline pumps would be tantamount to a Government stamp of approval to octane rating as the sole index of gasoline quality. The Commission rejects this view. It is granted that the posting of octane ratings will certainly make the public more aware of such a quality feature than has been the case previously. However, it is too broad a jump to conclude that the consuming public is so gullible as to assume that octane rating is the sole criteria of quality. Certainly purchasers of watches do not base their purchase decision strictly on how many jewels are in the watch. The same is true of clothing. Purchase decisions are not based solely on the fabric alone. Other factors such as style, price, and service play a role in a customer's decision to purchase one watch or one article of clothing in lieu of another. The jewel movements in a watch and the fabric in an article of clothing are but one vital piece of information made available to the consumer. So, too, with the octane rating of gasoline. It is a vital piece of information that should be made available to the consumer to be considered along with price and other factors in the purchase of gasoline.

Whether or not consumers will consider the fact that octane posting is a Federal requirement and therefore constitutes a Government stamp of approval is subject to speculation. Assuming the worst, i.e., that consumers did jump to this conclusion, this would be no justification for not providing to consumers an otherwise essential information factor in their selection of gasolines. Perhaps consumers buy the highest USDA grades of meat available at the meat counter on the assumption that this is a Government stamp of approval—this would be no reason to eliminate grading of meats by the USDA. The information is made available to consumers of meats. If they choose to purchase only the most expensive grades that is their choice. They have been provided with essential information. To what extent they let it influence their purchase decision is a matter for them to decide. The same would be true of the posting of octane information.

The opponents of the proposed rule maintained that since automobiles have differing engine characteristics which will have differing octane needs, the posting of the octane rating on the pump will not inform the motorist what gasoline his car should use.

It is because different autos have different octane requirements that the need to post such information concerning the octane number of the gasolines available becomes critical. The car owner's driving experience tells him which gasoline is best suited for his car. This proposition is granted. The car owner's ability to ascertain the precise gasoline for his particular engine will be enhanced with the added increment of information, the octane rating of the gasoline dispensed at the pump. The variations in autos illustrate the need for posting the octane ratings on gasoline pumps. It does not disprove the merit of the proposed rule.

The Commission recognizes the argument that at present the research octane number of evaluating gasoline antiknock capabilities is not a technically accurate measure, that the motor method is more effective, and that the road method is the best of the three but not in itself a totally accurate gauge.

The question, as the Commission views it, is not whether the Research Octane Method of evaluating gasoline antiknock properties is a technically perfect barometer, or whether the Road Method is technically superior to either the Research or Motor Method. The question that presents itself for consideration is whether the Research Octane Method of grading fuel antiknock properties is sufficient to afford the motoring public a benchmark in the selection of the gasoline which meets the needs of their particular automobile. Granted a given octane rating placed on a pump will not necessarily satisfy a given automobile. That is too much to expect and is, of course, far more than is needed. What is needed is a yardstick made available to the automobile driver, a starting point from which he can begin to evaluate gasoline antiknock values in relation to his automobile. The motorist needs no perfect measuring device, but he does need a yardstick, albeit not technically flawless, which gives him a starting point to compare gasolines. The Research Octane Number Method of rating gasoline antiknock properties is in common use in industry and in government purchase specifications as a yardstick—it need not be denied the motorist on grounds of nice technical distinctions as to accuracy.

The Commission is not persuaded by the prediction that posting of octane ratings on gasoline pumps will lead to octane wars. The possibility of octane wars eventuating is again a matter of conjecture. The fact remains that the customer is entitled to have that vital piece of information, the octane rating of the gasoline made available, in order to make an educated purchase decision. Nor is the Commission persuaded that a requirement that marketers of gasoline post octane ratings on the dispensing pumps will inhibit research in an industry as large as and as competitive as the petroleum industry.

Opponents of the proposed rule pointed out that since the octane requirements of automobile engines differ in certain parts of the country, the motorist driving from one area to another will be confused by the different octane ratings appearing on the pumps.

Despite the fact that geographic differences may require postings of different ratings, the bulk of gasoline consumed by the car owner is probably used for local driving, and the advantages of posting octane ratings enhance his knowledge of the gasolines available for local driving which represents the greater part of his dollar outlay for gasoline. For the tourists who may be puzzled as they travel from New York with 100 octane to Denver with 96 octane, it would not seem to be an insurmountable problem for gas station attendants to explain the why of such a variance in octane ratings between Denver and New York.

Industry members and others point out that under the present system a customer unhappy with a gasoline's performance may purchase another brand or grade of gasoline; and further, the existing designations of "regular," "premium," etc., are more meaningful to consumers that octane ratings. The Commission concludes that these arguments overlook certain points. The first is that while a customer may be able to ascertain when he is purchasing too little octane, he has no real way of determining that he is buying too much and consequently paying extra money for unneeded octanes. Secondly, without posting of octane ratings, customers have no really effective way of shopping "brands" or "grades" of gasoline. He is limited to shopping for brands or grades on the basis of price, station cleanliness and additive claims, which of course may be factors worth considering. The motorist should also be able to consider the quality of gasoline in relation to price and octane ratings of the gasoline purchased. To argue that if one is dissatisfied with X brand, shop around for Y and Z brands really misses the point. Shopping brands or grades without relevant information as to the octane rating/price relationship, or the octane rating/engine requirement relationship is shopping blind.

The Commission recognizes that there is some variation in the research octane numbers of gasolines produced by different refiners and that these variations may be reflected in the posting of minimum octane numbers on the gasoline pumps. However, the posting of research octane numbers is but one bit of information made available to the customer to be considered in his selection of gasoline. The numerical value of the octane rating of the gasoline will be evaluated by the consumer in relation to the price per gallon of the gasoline, in relation to other brands and in relation to the individual octane needs of the consumer's particular automobile. Octane is only one piece of information to be used by the consumer, and slight variations in octane numbers appearing on pumps may be overcome by differences in prices between that gasoline and one with slightly higher minimum posted octane number or other competitive factors.

Independent marketers of gasoline express concern that they have no control over the octane rating of the gasoline they purchase from refineries or middlemen and that the accuracy of their posting of octane ratings depends to a great extent upon the refiners and middlemen who supply them. Conversely, the independent refiners are also concerned with the fact that once the gasoline leaves the refinery it may pass through several parties prior to sale at the pump and the refiner may have no control over the ultimate octane number of the gasoline posted on the pump at the point of sale. The Commission recognizes that a requirement that marketers post minimum octane ratings on gasoline pumps may require greater efforts on the part of independent refiners to assure that the octane rating of the gasoline refined and sold by them is accurately posted. So, too, will independent marketers have to exert efforts to assure that their suppliers deliver the correct octane rated gasoline to them. The extra efforts required are far outweighed by the increased advantage to consumers of having the octane rating of gasoline made available to them through posting on the pump.

Some industry members have suggested the possibility that the posting of octane ratings will tend to divorce consumer purchase decisions from brand names. The Commission concludes that whether or not the posting of research octane numbers on gasoline pumps tends to make the consumer less attached to a certain brand name and more attentive to octane numbers and price is a matter of conjecture. If the Record establishes a need for the posting of octane ratings as an essential bit of consumer information

it matters little whether or not brand name significance is diluted or for that matter whether or not it is enhanced.

Opponents point out that gasoline companies presently must adhere to stringent State laws which set out precise specifications for gasoline quality and therefore these State requirements adequately protect the consumer.

Of course the purpose of the rule is not to question the quality of gasoline available or to otherwise improve gasoline specifications. It is rather designed to see that the information concerning one vital aspect of fuel capability is made available to the consumer. Apparently no State has chosen to require gasoline companies to make available to consumers one piece of information they consider essential in order to protect consumers, the octane rating of the gasoline sold in their respective States. The Commission believes this is an essential requirement.

It has been suggested that there is little variation in the octane ratings of competing gasolines of similar grades, i.e., most regulars have a research octane rating of 92 to 95 and most premiums have a research octane of 99 to 101. It is argued, therefore, that since there is little variation in octane ratings there is no need to post them and the motorist will be able to rely on such present descriptions as "regular" and "premium."

The Commission is not persuaded. Granting the accuracy of the above statement would also point up then the large gap that must exist in octanes between regulars and premiums and subregulars and premiums. As the range of octanes for each grade of gasoline narrows, then the gap in octanes between grades must widen—so that he who buys premium when regular will do is paying considerably more for considerably more octanes than necessary. In addition, the fact that some marketers are getting away from the two-grade system and going into subregulars, middle ranges between regular and premiums, superpremiums, Conoco's four-grade system and even multiple blending pumps which offer as many as eight selections indicates that there may in fact be many variances of octane ratings of gasoline being sold. If this be the case, then the consumer should be informed of the octane rating of the gasoline being dispensed from the pump so that he may weigh the cost, octane ratings, and engine requirement variables so as to make a more educated purchase.

Parties submitting statements in support as well as those in opposition to the proposed rule suggest that the rule should be modified so as to require marketers to post minimum octane ratings on the pump, i.e., the posting would then indicate that the gasoline being dispensed from the pump is at least 90 octane, rather than requiring a marketer to state that the gasoline is precisely 90 octane at any time it is sold. The Commission agrees that this modification is desirable. The modification requiring only the posting of the minimum octane rating enables the marketer to post an octane rating which he must always equal or even exceed. The use of a minimum research octane number should obviate any disputes as to how much tolerance should be allowed by the Commission on either side of a posted number when testing is accomplished. The Commission has modified the language of the rule so as to reflect the requirement that minimum research octane numbers be posted.

The Commission has also modified the language of the rule so as to exclude gasoline sold for aviation purposes from the requirements of this regulatory action. Although, as indicated by some witnesses, aviation gasoline is presently rated in terms of octane, the Commission is of the opinion the marketing of aviation gasoline may be a unique area with problems unrelated to a Trade Regulation Rule associated with other gasoline burning vehicles designed primarily to afford information to consumers as to cost and engine requirements vis-a-vis the octane rating of gasoline sold at the retail outlets.

Suggestions were made that the Commission enlarge the scope of the rule so as to require the automobile industry and other engine manufacturers to specify in owner's manuals and instruction documents the octane rating of the gasoline that they recommend for use in those engines. The Commission declines to follow such suggestions at this time. It may well be that once gasoline marketers make octane a matter of readily available information the automobile manufacturers and other marketers of gasoline engines may follow suit and publish recommended octane ratings in their manuals without the prodding of regulatory action. This would do much to complete the information circle, i.e., the manual recommends the octane rating of the gasoline to be used and the information as to octane rating is readily available to the car owner at the pump.

The Commission is also of the opinion that the existing language of the rule is broad enough to include within its purview a requirement that gasoline pumps dispening marine gasoline for craft powered by gasoline engines contain posted octane ratings.

The Commission was urged to re-examine the gasoline industry practices of dual distribution and exchange agreements taking into full account the deceptive practices upon the consumer. The Commission after lengthy hearings into the anticompetitive practices in the marketing of gasoline published its findings in 1967. The Commission has under scrutiny at all times the marketing practices dealt with in that report and Commission policy is one of proceeding against violators on a case-by-case basis looking to the issuance of cease and desist orders.

The Commission rejects suggestions that terms of art be adopted such as "regular," "premium," "mid-premium," "sub-regular," and that the rule define each of these by prescribing each in terms of minimum research octane rating.

This proposal would require only that gasoline marketers ascribe to certain minimum octane rating requirements in the gasoline they sell. No posting of the octane information is required. The whole rationale for any Commission action is to provide the consumer, not the FTC, with information as to the octane rating of the gasoline. Under the proposed rule there is no reason why gasoline marketers must discontinue the use of the grade names of regular and premium. Their only other requirement would be to state that their regular was a minimum octane rating or that their premium was a minimum octane rating. The rule imposes no restrictions on the use of the commonly accepted terms as regular, premium, super, etc. It merely affords the consumer another piece of information in the selection of his gasoline. The consumer needs the information as to the minimum octane rating of gasolines marketed; the FTC does not need that information stored in some file cabinet away from the eyes of the public.

The alternate suggestion that a Trade Regulation Rule creating a graded system registering fuels based on road octane numbers but requiring no posting of numbers on the pumps, and the suggestion that refiners only be required to file with the Federal Trade Commission certifications that their grades meet certain minimum octane ratings are not considered satisfactory by the Commission.

One would utilize grade labeling but would not require the posting on the pumps of the octane number. The other would simply make the FTC the repository of certifications. Again, under these plans, industry and government would agree that each grade of gasoline had certain numerical minimum octane ratings. The consumer would be effectively denied the same information.

Several have suggested that the Commission consult with other learned sources such as the National Academy of Engineering or the Society of Automotive Engineers for further consideration as to the need for and utility of posting octane ratings on gasoline dispensing pumps. The Commission concludes that the Record which contains informed testimony from both industry members and consumer groups demonstrates the need and feasibility for industry making a simple affirmative disclosure of the research octane rating of gasoline. This Commission is the body to determine whether or not the affirmative disclosure of minimum research octane ratings of gasoline will assist the consumer to effect an educated purchase. We conclude that such postings are necessary.

The suggestion that the Commission utilize a "performance index" which involves several features of gasoline quality in addition to octane ratings is of interest. Ultimately there may be devised an overall quality index that may provide consumers with a complete view of the quality of gasoline. At present there does not appear to be any such sophisticated system in use. Rather than wait for one, the industry has readily available a piece of information that will assist the consumer, the Research Octane Number. This should be utilized now by the industry. If the state of the art progresses to a point where a better index of quality can be developed, then this could be substituted for research octane posting on the pumps.

The Commission is not unaware of the recent developments concerning the relationship between lead and gasoline refining. As a result of the present national concern and governmental action as evidenced by the presidential recommendation for legislation enabling the regulation of fuel composition and additives; the action of the Department of Health, Education, and Welfare in developing emission standards; the interim report of the Department of Commerce's Technical Advisory Board Panel recommending a requirement for the general availability of an unleaded grade of gasoline by July 1974; and by the announcements of the introduction of nonleaded or low lead gasoline by several industry members such as Atlantic Richfield, Shell Oil Co., Union Oil Co., and Humble Oil & Refining Co., the Commission has been urged to forgo action. The basis for this recommendation is that the introduction of a new category of gasoline, along with a requirement to post octane ratings for all gasolines, will add to consumer confusion.

The Commission is of the opinion that the unknowns involved in the marketing of unleaded or gasolines with less lead do not militate against the need for posting octane ratings on gasoline pumps. Gasolines without lead or with smaller amounts of lead will continue to have octane ratings. It should work to the advantage of consumers to have octane ratings of all gasolines posted, leaded or unleaded, so as to assist them in deciding which gasoline is best for their car.

VII. *The Commission's rulemaking authority.* The argument was made during the course of this proceeding, as has been done in other Trade Regulation Rule proceedings, that the Commission has no authority to promulgate Trade Regulation Rules. (See Record pp. 307, 359, 361, 364, 434 and n. 1, 578, 626, and 702.)

In its Statement of Basis and Purpose accompanying the Cigarette Rule, the Commission elaborated at length on its trade

regulation rulemaking authority and concluded that a Trade Regulation Rule is "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) The Commission continues to adhere to that view.

VIII. *The effective date of the Rule.* The effective date of the rule will be one hundred and eighty (180) days after the date of promulgation.

[FR Doc.71-271 Filed 1-11-71;8:45 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-380; Order 410-A]

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Accounting and Rate Treatment of Advance Payments to Suppliers for Gas

JANUARY 8, 1971.

Accounting and rate treatment of advance payments to suppliers for gas, and amending FPC Form No. 2; Docket No. R-380.

On November 27, 1960, the Commission issued an order granting rehearing for purposes of further consideration of Order No. 410 in Docket No. R-380, which order provided for accounting and rate treatment of advance payments made to suppliers, by pipelines for gas to be delivered at a future date, and amended its Uniform Systems of Accounts for Class A and Class B Natural Gas Companies consistent with amendments to such regulations.

The order granting rehearing was issued in response to those petitions for rehearing as indicated therein. On December 22, 1970, Pennzoil Offshore Gas Operators, Inc., and Pennzoil Producing Co. submitted a joint answer and on December 23, 1970, Texas Gas Transmission Corp. also filed an answer to this rule making proceeding.

Some petitions for rehearing have persuaded us to renotice Account 166, to consider modifying Account 166, and to consider a new Account 167 with respect to advances for exploration (including lease aquisition costs). In order to afford all parties an opportunity to be heard on all issues, we issue concurrently a notice of proposed rule making in Docket No. R-411.

In the interim, we have determined that advances by pipelines to independent producers for exploration and lease acquisition costs will be assured of accounting and rate treatment pursuant to Order 410 as modified herein. With regard to advance payments by pipelines to their own affiliates for exploration and lease acquisition costs in this interim, we will reserve for determination in the order or orders, if any, in R-411 whether such advances will be assured rate treatment pursuant to Order 410 as modified herein. Advances to independent producers and to affiliates for development in this interim will be assured of accounting and rate treatment pursuant to Order 410 as modified herein. Advances to independent producers and to affiliates subsequent to the issuance of an order, if any, in R-411 will be controlled by the order, if any, in R-411.

However until such modification may be accomplished under formal rule making procedures, the amendments prescribed herein are deemed appropriate upon consideration of the petitioners requests for clarification.

The Commission finds:

(1) Adoption of the amendments to the Uniform System of Accounts for Class A and Class B Natural Gas Companies prescribed in Order 410, as modified in the ordering paragraph below is necessary and appropriate to the administration of the Natural Gas Act.

(2) Good cause exists for the adoption herein of the revision of Balance Sheet Account 166, Advance Payments for Gas, prescribed in ordering paragraph (A), to be effective immediately.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly by sections 4, 5, 7, 15, and 16 (52 Stat. 822, 823, 824, 825, 829, and 830 (1938); 56 Stat. 83, 84 (1942); 61 Stat. 459 (1947); 76 Stat. 72 (1962); 15 U.S.C. 717c, 717d, 717f, 717n, and 717o, orders:

(A) The Commission's Uniform System of Accounts for Class A and Class B Natural Gas Companies, prescribed by Part 201, Chapter I, Title 18 of the Code of Federal Regulations, as amended by Order 410, is further amended as follows:

(1) The text of Balance Sheet Account is amended by revising Account "166, Advance Payments for Gas," to read as follows:

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

* * * * *

3. CURRENT AND ACCRUED ASSETS

166 Advance payments for gas.

A. This account shall include all advance payments made for gas (whether called "advance payments," "contribution," or otherwise) to others, including advances to affiliated or associated companies, for exploration (including lease acquisition costs), development, or production of natural gas, when such advance payments are to be repaid by delivery of gas. Under each agreement with payee, such payments must be made prior to initial gas deliveries, or if the agreement provides for advances on a well by well basis, each incremental payment must be made prior to deliveries from an incremental well, or prior to Federal and/or State authorization as appropriate. Noncurrent advance payments not to be repaid in gas within a 2-year period shall be reclassified and transferred to account 124, Other Investments, for balance sheet purposes. This transfer is for reporting purposes only and has no effect on accounting or rate making.

B. This account shall include advances to a pipeline affiliated producer obtaining a working interest in any production activity. When a pipeline obtains a working interest as a result of advance payments to producers, such advances shall be included in the appropriate production accounts.

C. Outstanding advance payments should be fully reduced within a reasonable period of time following commencement of deliveries. A sufficient portion of all gas taken should be credited to outstanding advance payments so as to eliminate the advance within a 5-year period or as otherwise authorized by the Commission upon request by the pipeline company. The reduction of the outstanding advance payments should not be dependent on a buyer purchasing more than 100 percent of the minimum take or pay quantity provided in the contract.

D. This account must be credited by the amount of advances which become nonrecoverable at the time such amounts are recognized as nonrecoverable. Nonrecoverable advance payments significant in amount may be charged to Account 435, Extraordinary Deductions, or when authorized by the Commission, charged to Account 186, Miscellaneous Deferred Debits, and Amortized to Account 813, Other Gas Supply Expenses. Nonrecoverable advance payments insignificant in amount should be charged directly to Account 813 in the year recognized as nonrecoverable.

E. Recovered advance payments shall be credited to this account and charged to the appropriate gas purchase account.

F. Whenever as a result of advances included in this account, a pipeline obtains any interest in leases, operations or findings of a producer (including an affiliated producer), any income or return from such interest must be credited to this account, as received, to the extent that there is any amount of the related advance unrecovered. Any income or return in excess of a fully recovered advance is to be credited, first, to this account to the extent that there are any nonrecoverable advance payments outstanding. Second, an amount up to the total of all nonrecoverable advances that may have been amortized is to be credited to Account 813, Other Gas Supply Expenses. Third, if there is any excess after fully satisfying the recovery of the related advance and all nonrecoverable advances as hereinbefore indicated, such excess shall be credited to Account 421, Miscellaneous Nonoperating Income, except that an amount computed at 7 percent, simple interest, of (1) the outstanding unrecovered advance payments over the period that such payments are included in this account, and of (2) the

nonrecoverable advance payments from the time that such payments were included in this account, shall be credited to Account 495, Other Gas Revenues. The computation of the applicable amount of such interest shall be made over the entire period that the related advance payment or unrecovered balance thereof had been recorded in this account, and the period that the nonrecoverable advance payments were first included in this account until the time fully recovered by the company from interests obtained from other advances. If the income or return is received in other than money, then it shall be included at the market value of such assets received.

G. No transfers shall be made from this account to any other account, unless otherwise provided herein, except as authorized by the Commission upon request by the pipeline company.

H. Three copies of any agreement concerning advance payments will be filed with the Secretary within 30 days of the initial related entry in Account 166.

NOTE: To keep the Commission informed on any activities or circumstances which cause the repayment of an advance in other than gas or when an advance is nonrecoverable by any means, the company must submit the full details involved as soon as such change becomes known.

(B) Except as herein granted, the applications for rehearing of Order No. 410 are denied.

(C) This order modifying Order No. 410 is effective immediately upon issuance.

(D) The Secretary of the Commission shall cause prompt publication of this order.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[FR Doc.71-451 Filed 1-11-71;8:49 am]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 870—RESTRICTION ON GARNISHMENT

Exemption of Garnishments Issued Under Laws of Virginia

On September 11, 1970, notice was published in the FEDERAL REGISTER (35 F.R. 14368) that seven States, including the State of Virginia, had filed applications with the Administrator of the Wage and Hour Division of the Department of Labor for the exemption of the respective State-regulated garnishments from the provisions of section 303(a) of the Consumer Credit Protection Act (CCPA). Interested persons were given 30 days in which to comment on each of the applications.

After examination of sections 34-26, 34-27, and 34-29 of the Code of Virginia, as amended and reenacted by Chapter 428 of the Acts of the General Assembly of Virginia (1970), and the regulations promulgated under section 34-29(b) by the State Commissioner of Labor and Industry, and after consideration of all relevant matters received, I have determined that the laws of the State of Virginia provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of the CCPA, and that, therefore, garnishments issued under those laws should be exempted from the provisions of section 303(a).

Accordingly, pursuant to sections 305 and 306 of the CCPA (82 Stat. 164; 15 U.S.C. 1675, 1676), and to 29 CFR 870.2 and Subpart C of such part, I hereby amend § 870.57 in the manner set forth below.

Effective date. Inasmuch as this amendment grants an exemption, no delay in effective date is required by 5 U.S.C. 553. Nor would any delay serve a useful purpose here. Accordingly, this amendment shall become effective upon the date prescribed therein.

Section 870.57 of Title 29 of the Code of Federal Regulations (35 F.R. 18527) is hereby amended by adding thereto an additional paragraph, designated paragraph (b), and reads as follows:

§ 870.57 Exemptions.

* * * * *

(b) *State of Virginia.* Effective January 12, 1971, garnishments issued under the laws of the State of Virginia are exempt from the provisions of section 303(a) of the CCPA under the following additional conditions: (1) Whenever garnishments are ordered in the State of Virginia which are not deemed to be governed by section 34-29 of the Code of Virginia, as amended, and the laws of another State are applied, section 303(a) of the CCPA shall apply to such garnishments according to the provisions thereof; and (2) whenever the earnings of any individual subject to garnishment are withheld and a suspending or supersedeas bond is undertaken in the course of an appeal from a lower court decision, section 303(a) of the CCPA shall apply to the withholding of such earnings under this procedure according to the provisions thereof.

(Secs. 305, 306, 82 Stat. 164; 15 U.S.C. 1675, 1676)

Signed at Washington, D.C., this 7th day of January 1971.

ROBERT D. MORAN,
Administrator.

[FR Doc.71-341 Filed 1-11-71;8:46 am]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. 1-45]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Authority With Respect to Emergency Rail Services Act of 1970

The purpose of this amendment is to delegate certain of the Secretary's functions under the Emergency Rail Services Act of 1970 (Public Law 91-663) to the Federal Railroad Administrator.

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, effective January 8, 1971, § 1.49 of Title 49, Code of Federal Regulations, is amended by adding the following new paragraph at the end thereof:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(m) Exercise the authority vested in the Secretary by the Emergency Rail Services Act of 1970 (Public Law 91-663), except the authority to make findings required by section 3(a) of that Act and the authority to sign guarantees of certificates issued by trustees.

(Sec. 9, Department of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C., on the 8th day of January 1971.

JAMES M. BEGGS,
Acting Secretary of Transportation.

[FR Doc.71-469 Filed 1-11-71;11:39 am]

Title 32—NATIONAL DEFENSE

Chapter XVII—Office of Emergency Preparedness

PART 1709—REIMBURSEMENT OF OTHER FEDERAL AGENCIES PERFORMING MAJOR DISASTER RELIEF FUNCTIONS

PART 1710—FEDERAL DISASTER ASSISTANCE

Applications for Disaster Assistance Under Disaster Relief Act of 1970

CROSS REFERENCE: For a document superseding certain regulations in Parts 1709 and 1710 of Chapter XVII of Title 32 of the Code of Federal Regulations, see F.R. Doc. 71-340, Office of Emergency Preparedness, in the Notices section of this issue.

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4937]

[Sacramento 2634]

CALIFORNIA

Withdrawal for Reclamation Project

By virtue of the authority contained in section 3 of the Act of June 17, 1902, 32

Stat. 388, as amended and supplemented, 43 U.S.C. sec. 416 (1964), it is ordered as follows:

Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved for the Auburn-Folsom South Unit, American River Division, Central Valley Project:

MOUNT DIABLO MERIDIAN

T. 13 N., R. 10 E.,
Sec. 19, lots 19 and 20.

The areas described aggregate approximately 70.20 acres in Placer and El Dorado Counties.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 31, 1970.

[FR Doc.71-344 Filed 1-11-71;8:47 am]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

[General Order 109, Rev.]

PART 390—CAPITAL CONSTRUCTION FUND

In F.R. Doc. 70-17609, appearing in the FEDERAL REGISTER issue of December 31, 1970 (35 F.R. 20002), the text of the joint regulation of the Commissioner of Internal Revenue and the Assistant Secretary of Commerce for Maritime Affairs/Maritime Administrator was incorporated in to a new Subchapter K—Regulations under Public Law 91-469 and a new Part 390—Capital Construction Fund of this title and chapter.

Part 390 is hereby revised to read as follows:

§ 390.1 Deposits for taxable year 1970.

In the case of taxable years commencing after December 31, 1969, and on or before December 31, 1970, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A Capital Construction Fund Agreement executed and entered into by a taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return, will be deemed to have been effective on the date of the actual execution of the agreement or as of the close of business of the last regular business day of such taxable year, whichever date is earlier;

(b) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the actual date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever date is earlier. Nothing in this paragraph shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Public Law 91-469, 84 Stat. 1018; sec. 21(a), 84 Stat. 1026)

Dated: January 7, 1971.

By order of the Assistant Secretary of Commerce for Maritime Affairs/Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.71-441 Filed 1-11-71;8:49 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

PART 8—NATIONAL SERVICE LIFE INSURANCE

Interest Rates on Policy Loans

1. Section 6.96 is revised to read as follows:

§ 6.96 Special dividends.

Any special U.S. Government Life Insurance dividend that may be declared shall be paid in cash. Such special dividends shall not be accepted to accumulate on deposit or as a dividend credit. Except as provided in § 6.19, unpaid special dividends shall not be available to pay premiums.

2. In § 6.102, paragraph (c) is added to read as follows:

§ 6.102 Rate of interest on policy loans on and after July 19, 1939.

* * * * *

(c) All loans applied for on and after January 11, 1971, will be granted at the interest rate of 5 per centum per annum.

3. In § 8.28, paragraph (c) is added to read as follows:

§ 8.28 Policy loan; other than 5-year level premium term and limited convertible 5-year level premium term policies.

* * * * *

(c) All loans applied for on and after January 11, 1971, will be granted at the interest rate of 5 per centum per annum.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective January 11, 1971.

Approved: December 30, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.71-372 Filed 1-11-71;8:49 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Great Swamp National Wildlife Refuge, N.J.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

NEW JERSEY

GREAT SWAMP NATIONAL WILDLIFE REFUGE

Travel by motor vehicle or on foot is permitted only in approved Public Use Areas as designated by signs, for the purpose of nature study, photography, hiking, and sight-seeing, during daylight hours. Pets are allowed on a leash not exceeding 10 feet in length in the public parking lots only.

The refuge area, comprising 4,645 acres, is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office and Courthouse, Boston, MA 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1971.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 4, 1971.

[FR Doc.71-336 Filed 1-11-71;8:46 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Iroquois National Wildlife Refuge, N.Y.

The following special regulation is issued and is effective on the date of publication in the FEDERAL REGISTER.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

NEW YORK

IROQUOIS NATIONAL WILDLIFE REFUGE

Travel on foot or by motor vehicle except snowmobile is permitted on designated travel routes, for the purpose of nature study, photography, hiking, and sight-seeing during daylight hours. Pets are permitted if on a leash not over 10 feet in length. Fishing and hunting may be permitted under special regulations.

The refuge area, comprising 10,783 acres, is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office and Courthouse, Boston, MA 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1971.

RICHARD E. GRIFFITH,
Regional Director.

JANUARY 4, 1971.

[FR Doc.71-337 Filed 1-11-71;8:46 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Montezuma National Wildlife Refuge, N.Y.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

Travel by motor vehicle or on foot is permitted on designated travel routes for the purpose of nature study, photography, and sight-seeing during daylight hours. Pets are allowed if on a leash not over 10 feet in length. Picnicking is permitted in designated areas where facilities are provided. Fishing and hunting under special regulations may be permitted on parts of the Refuge.

The Refuge area, comprising 6,041 acres, is delineated on maps available at Refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office and Courthouse, Boston, MA 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1971.

RICHARD E. GRIFFITH,
Regional Director.

JANUARY 4, 1971.

[FR Doc.71-338 Filed 1-11-71;8:46 am]

PART 33—SPORT FISHING

Wichita Mountains Wildlife Refuge, Okla.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

OKLAHOMA

WICHITA MOUNTAINS WILDLIFE REFUGE

Sport fishing on the Wichita Mountains Wildlife Refuge, Cache, Okla., is permitted from January 1, 1971, through December 31, 1971 inclusive, in all waters of that portion of the refuge open for recreational uses by the general public, except buoyed swimming areas and areas closed by appropriate signs. These open waters, comprising approximately 550 acres of lakes and 1 mile of intermittent stream, are delineated on maps available at refuge headquarters, Cache, Okla. 73527, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Fishing with closely attended poles and lines, including rods and reels is permitted. The taking of any fish by any other means is prohibited, except the taking of nongame fish from the Wichita Mountains Wildlife Refuge portion of Elmer Thomas Lake by the use of gigs, spears, or other similar devices (but not including bows and arrows) containing not more than three (3) points, with no more than two (2) barbs on each point, is permitted.

(2) Fishermen may use one-man inner tube type "fishing floaters" while fishing. Wading while fishing is permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33, and are effective through December 31, 1971.

JULIAN A. HOWARD,
Refuge Manager, Wichita Mountains Wildlife Refuge, Cache, Okla.

DECEMBER 23, 1970.

[FR Doc.71-339 Filed 1-11-71;8:46 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

MINIMUM TAX FOR TAX PREFERENCES

Notice of Proposed Rule Making

Correction

In F.R. Doc. 70-17544 appearing at page 19757 in the issue for Wednesday, December 30, 1970, the following changes should be made:

1. The first table in *Example 4* of § 1.57-4(e) should appear as set forth below:

Gross income—1970		$170,000
Deductions:		
Capital gains deduction	disallowed	
Business deductions	$120,000	120,000
Taxable income for section 172 (b)(2)		50,000

2. In paragraph (a) of *Example (1)* of § 1.58-7 (b)(2)(vi) a zero should be inserted in the third column opposite the entry "Excess of U.S. net income over investment interest expenses:".

3. The first table in *Example 4* of § 1.58-7 (c)(1)(iii) should appear as set forth below:

Foreign loss:		
Gross income		$400,000
Deductions:		
Preferences (excess of accelerated depreciation on section 1250 property over straight-line)	$200,000	
Other deductions	550,000	(750,000)
Net operating loss		350,000

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 80]

RESTORATION OF GAME BIRDS, FISH, AND MAMMALS

Proposed Hunter Safety Program

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 10 of the Federal Aid in Wildlife Restoration Act, as amended (50 Stat. 919; 16 U.S.C. 669i) and by section 10 of the Federal Aid in Fish Restoration Act, as amended (64 Stat. 434; 16 U.S.C. 777i), it is proposed to revise Part 80 of Title 50, Code of Federal Regulations, as set forth below.

The proposed changes will establish regulations for a hunter safety program as authorized by the Federal Aid in Wildlife Restoration Act Amendments of 1970 (Public Law 91-503). Also, the 1970 Amendment removes the limitations on expenditures for maintenance and management activities and engineering costs. This is reflected in the proposed changes.

1. Section 80.1(e) will be altered to revise the definition of "Project" so that that it may encompass a hunter safety program.

2. Section 80.1(k) refers to the previous limitation on use of Federal Aid in Wildlife Restoration funds for management activities. This paragraph will be deleted.

3. Section 80.1 (o) and (p) will be added to provide definitions for "Hunter Safety Program" and "Target Range," as authorized by Public Law 91-503.

As amended, § 80.1 will read as follows:

§ 80.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

* * * * *

(e) *Project.* A sound and substantial undertaking with the general objective of (1) restoring or managing fish and wildlife populations now and for the future and for preserving and improving sport fishing, hunting, and related uses of these resources, or (2) providing facilities and services for conducting a hunter safety program.

* * * * *

(k) [Deleted]

* * * * *

(o) *Hunter safety program.* A program to provide instruction and practice in safe use of firearms, instruction in avoidance of all types of accidents and hazards associated with hunting and instruction in survival techniques and first aid. Training in sporting ethics and rudiments of wildlife management and in the proper use of archery equipment may be provided incidental to the program.

(p) *Target range.* A facility, to provide for the safe discharge of rifles, shotguns, pistols, and archery equipment. In carrying out the hunter safety program, public outdoor target ranges may be constructed, operated, and maintained to provide opportunity for training and practice in the use of shotguns, rifles, pistols, and archery equipment.

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240 within 30 days of the publication of this notice in the FEDERAL REGISTER.

SPENCER H. SMITH,
Acting Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 6, 1971.

[FR Doc.71-346 Filed 1-11-71;8:47 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1061]

[Docket No. AO-367-A2]

MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Southeastern Minnesota-Northern Iowa (Dairyland) marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Rochester, Minn., on August 19, 1970, pursuant to notice thereof which was issued August 3, 1970 (35 F.R. 12613).

The material issues on the record of the hearing relate to:

1. Class I price level after October 31, 1970.
2. Pool plant performance standards.
3. Basis for making producer payments.
4. Charges on overdue accounts.
5. Miscellaneous, administrative and conforming changes.

Under Issue 5, no testimony was received concerning proposals 7, 8, and 9 as published in the notice of hearing, and no other basis exists in the record for considering the changes proposed. Accordingly, no action on such proposals is taken in this decision.

A final order concerning Issue No. 1 was made effective November 1, 1970 (35 F.R. 16790). This decision deals with the remaining issues.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Pool plant performance standards.* No change should be made in the monthly shipping percentages for pooling distributing and supply type plants, or in the number of months for qualifying a supply plant for automatic pooling. The pool plant provisions should be changed to substitute the term "route disposition" for the presently provided "route", to revise the method of pooling a supply plant operated by a cooperative association, and to clarify the status of "reload" points.

Currently, the order provides that a pool distributing plant must dispose of not less than 10 percent of its Grade A receipts (excluding packaged fluid milk products) for the month as Class I milk in the marketing area either on routes or to another plant from which it then is disposed of in the marketing area on routes. The order further provides that during the months of February through August, not less than 15 percent (20 percent in all other months) of such receipts be disposed of as Class I milk either on routes or in the form of packaged fluid milk products moved to other plants.

A cooperative association proposed that performance standards for pool distributing plants be increased to provide that a minimum of 25 percent of a handler's Grade A receipts (excluding packaged fluid milk products) be distributed as Class I milk during the month (as route disposition), except during the months of September through January when such Class I distribution percentage should be one-third of the Grade A receipts in the distributing plant. No change was proposed for the 10 percent in-area requirement.

Proponent based the claim for establishing higher performance standards on the stated necessity for distributing plants and supply plants to have a greater degree of association with the market than at present. The witness pointed out that the standards presently provided by the order are below those generally provided in Federal orders.

The proposal was opposed by a cooperative association operating in the market. If adopted, the proposal would result in depooling the association's distributing plant. Another cooperative association serving the market supported this association in its opposition to the proposal, contending that no plant regularly associated with the pool should be deprived of that status.

Pool plant performance standards identify plants that are associated with the market as regular suppliers of milk needed for fluid use. The standards provided in the order were established as the minimum requirements such plants must meet to acquire pool plants status. Because pool supply plants and pool distributing plants follow different marketing practices, and because they serve different functions in the market, performance standards have been provided for each type of plant. Basically, pooling standards are intended to accommodate a sharing of the Class I sales of the regulated market among those dairy farmers who constitute its regular sources of milk supply. Otherwise, dairy farmers who have no regular affiliation could casually, or in an incidental manner, associate with the market when it is to their advantage to do so, but without intention of providing it with a dependable supply over time.

At the inception of the order there were 15 distributing plants pooled. Two additional distributing plants have been pooled since then, one of them discontinuing operations at the end of June 1970. At the time of the hearing in August there were ten remaining pool distributing plants, of which nine have been pooled since the inception of the order. The decrease in the number of pool distributing plants has resulted primarily from plant closings.

In the promulgation decision for the order, the Under Secretary concluded that the performance standards for distributing plants should be such that all plants serving the market at that time could qualify as pool plants. Some of the distributing plants in this area of heavy milk production carry on extensive manufacturing operations. In such plants, the total Grade A milk received normally exceeds substantially the quantity needed for fluid sales alone. In April 1968, before the order was established, at least one of the distributing plants serving the market had Class I route disposition only slightly more than 15 percent of the plant's Grade A milk receipts. At the time of the August 1970 hearing, the proportion was about the same.

The present pooling standards have accommodated, as intended, the pooling of all distributing plants regularly associated with the market. The testimony that was presented to change the standards did not substantiate a need to do so at this time. It is concluded that more stringent provisions for qualifying pool distributing plants should not be adopted.

Proponent proposed also that the requirements for pool supply plant qualification be increased. Specifically, it was proposed that not less than one-third of a supply plant's total Grade A producer receipts be delivered during each month to pool distributing plants. The order requires, currently, that at least 15 percent of such receipts be delivered to pool distributing plants. The qualifying period for automatic pooling status in other months now includes the months of September through November. Proponent would add the months of December and January.

The main thrust of proponent's testimony, again, was that neighboring Federal milk orders provide for higher standards for pooling supply plants than does the Dairyland order.

Originally, there were two pool supply plants serving the market. As a result of mergers and acquisitions since the inception of the order there was only one pool supply plant at the time of the hearing. The operator of the one remaining pool supply plant did not testify on the proposal to increase the performance standards for pool supply plants.

One witness, representing a large cooperative, testified in opposition to the proposed increase in pool supply plant standards because the cooperative already had organized its operation for the purpose of pooling a supply plant during the September through November 1970 qualifying period. This is additional to the supply plant previously mentioned. Prior to July 1, 1970, this cooperative received member-producer milk at its bottling plant, a pool distributing plant under the order. On July 1, 1970, this plant was closed and the cooperative entered into a custom bottling arrangement with another handler, also with a pool distributing plant under the order.

After July 1, 1970, the milk of the member-producers was received directly at the latter plant. During the 1970 fall qualifying period, however, the cooperative will have shipped such milk through its own supply plant, which it planned to add to the market September 1, 1970.

The performance standards for pool supply plants recognize the dual marketing function of supply plants in this market, which is to ship milk to distributing plants when it is needed and to manufacture the excess when it is not needed by distributing plants. Local outlets for Grade A milk have not expanded in proportion to the Grade A milk supply. When local and out-of-market sales do not absorb the excess it must be manufactured. The relatively low shipment standards required for pool plant status make it possible for a supply plant to pool if it also engages in manufacturing dairy products.

If the pooling qualification standards for supply plants were revised, as proposed, one of the supply plants serving the market would be disqualified from pooling, and possibly the planned one also. The chief result would be to disqualify from pooling a substantial number of producers who regularly have been associated with the market. Further, the reason given by proponent to change the

pooling standards for supply plants is not adequate, of itself, to warrant such a change for this market. No reason in marketing was shown to change pool supply plant performance standards at this time.

When the order was established, the Under Secretary determined that supply plant milk is most likely to be needed in the months of September, October, and November. These months were selected as the months during which supply plants would make the necessary shipments for pooling, after which they could retain pool status during the following months of December through August regardless of further shipments. Proponent proposed that the months of December and January be added to the qualifying months now provided. However, no testimony substantiating the need to provide 2 additional months was presented.

The months during which supply plant milk is most likely to be needed has not changed since the inception of the order. In 1969, September, October, and November were the months during which the greatest proportion of producer milk was used in Class I. The percentages were 69 percent, 70 percent, and 64 percent respectively. Prior to September, and after November, the proportion of producer milk used in Class I was substantially less. The proposal to add additional months would not be appropriate and, accordingly, is denied.

In its posthearing brief, a cooperative association proposed that when a distributing plant qualifies for pooling it should be pooled automatically in the following month. No factual data was presented to substantiate the need for such provision in the order. Accordingly, it also is denied.

Another cooperative association proposed that the reference to "route" in the pool distributing plant provision be revised so that the provision refers to "route disposition". This clarifying change should be made to comport with the definition now provided in the order. As provided, route disposition means a delivery from a plant (including delivery from a retail store at such plant and delivery through vendors or distribution points) of any fluid milk product classified as Class I under § 1061.41(a) to a retail or wholesale outlet other than a milk plant.

The order provides that in the case of a supply plant operated by a cooperative association, the milk which the association causes to be delivered to distributing pool plants directly from the farms of member producers may be considered as a receipt at the supply plant of the association for the purpose of determining the qualification of such plant as a pool supply plant. Proponent proposed that the order be amended to make this provision mandatory rather than optional as at present.

Proponent contended that any supply plant which a cooperative association qualifies for pooling under this provision should be subject to regulation under the Dairyland order for as long as such association supplies the major portion of its producer members' milk to handlers regulated by the order, and any shipments from the plant to pool plants in other order markets are only occasional and incidental to the handling of reserve supplies of the Dairyland market. Otherwise, proponent contended, such plant might become subject to regulation under different orders in succeeding months, possibly creating disorderly marketing conditions. With the proximity of the Dairyland order to other Federal orders in this general area, such shifting could occur readily.

The purpose of the provision currently provided is to facilitate the pooling of reserve milk handled by the "balancing plant" of any cooperative association whose member producers have their milk delivered from their farms to pool distributing plants. The supply plant of a cooperative association may be the most efficient outlet for manufacturing the reserve milk of such plants. This method of providing for the handling of reserve milk serves a purpose similar to that of diversion, and it should continue to be provided in the order as an alternate means of pooling a supply plant of a cooperative association.

Heretofore, such designation has been optional. A cooperative association that is primarily engaged in supplying milk directly from the farms of its members to pool distributing plants it does not operate should be permitted to pool a plant which it operates as an adjunct to this primary function. Such association would be performing valuable services for the market in maintaining an adequate supply of milk for the market's needs and assuming the responsibility for marketing all milk produced by its member producers that is in excess of handlers' requirements. Permitting a cooperative association, under these conditions, to pool the returns from the sale of milk that moves directly to the association's plant may contribute materially to orderly marketing. For these reasons, a cooperative association should continue to have the option of designating its plant as a balancing plant for the market.

In this connection, the order should provide further that the cooperative may designate the particular plants for which it desires pooling on this basis. The designation would remain in force so long as the requirement for pooling is met or until the cooperative requests nonpool status for the plant.

Such plant should not be prevented from shifting to regulation under another order if the cooperative develops sufficient outlets in another order market to pool the plant there. This would be especially true if it would result in better returns than may be obtained under the Dairyland order where a relatively high proportion of the milk that is pooled is utilized in Class II.

It is recognized that the regulation of such plant under different orders in succeeding months could create disorderly marketing conditions. Nevertheless, the nominal provisions for pooling a balancing plant under the Dairyland order should not lock the plant into regulation under the order. In this area of heavy production a cooperative association should not be inhibited from terminating the balancing plant function of a plant for the Dairyland market when it is advantageous to do so. When this is done, however, it should not be possible to requalify the plant immediately thereafter for pool status under the Dairyland order unless it meets the same shipping requirements as other plants for the ensuing 12 months (a full production year).

A facility used only for transferring bulk milk from one tank truck to another should not be considered a plant, or part of a plant. Such truck transfers should be regarded as in transit from the farm to the plant, at which stationary handling facilities such as holding tanks are maintained. The provision provided herein will clarify the order language in line with this intended application, set forth in the promulgation decision (34 F.R. 3812).

3. *Basis for paying producers.* A provision to limit the form of payments under the order to cash, checks, or money orders should not be adopted.

A cooperative association proposed that payments under the order be in the form of cash, checks, or money orders. The witness for the association stated that no other form of payment should be accepted to fulfill order obligations. Although no specific problem was cited under the order, proponent testified that the proposal would improve the effective administration of the producer-settlement fund and would assist the market administrator in determining whether payments under the order have been made to producers and to cooperative associations.

Basic purposes of the order are to fix minimum prices that all handlers must pay for producer milk in accordance with the manner in which it is used and to return to producers the uniform price based on the utilization of all producer milk in the market.

Money is paid into the producer-settlement fund by those handlers whose obligation for producer milk received during the month is more than the amount they are required to pay for such milk at the uniform price. A handler whose utilization is below the average for the market, and whose obligation for producer milk received during the month is less than the uniform price value, receives payment of the difference from the producer-settlement fund. This equalization process enables all handlers to pay their producers the uniform price for milk delivered.

One of the duties of the market administrator is to verify that handlers have paid producers and cooperative associations the applicable minimum price for milk received from them. If a handler fails to pay his obligation to the producer-settlement fund, or fails to pay producers or cooperative associations the full minimum uniform price value for milk received from them, by the dates provided in the order, he is in violation of

the order. Should this occur, whether he receives payment from or makes payment to, the producer-settlement fund, he is subject to normal legal procedures to obtain compliance.

Since the producer-settlement fund is a clearing house for the receipt and disbursement of funds obligated under the order, it must function, necessarily, on the basis of prompt payment as prescribed. Even temporary defaults by some handlers would work unfairness to others, encourage wider noncompliance, and affect producers adversely. Proponent's proposal could not be expected to improve the effective administration of the producer-settlement fund. Payments by handlers to the producer-settlement fund customarily are being made by check and proponent's proposal would not change this.

While payment of obligations to the producer-settlement fund is under the immediate scrutiny of the market administrator, it is not so readily apparent whether payments to producers or to cooperative associations have been made by the dates provided in the order. A complaint of nonpayment may be made to the market administrator by a producer or by a cooperative association and an investigation undertaken. In the absence of such complaint, the market administrator normally will not discover whether a handler is in violation of the payment provisions until the handler's reports have been examined and the information reported has been verified.

Proponent indicated that the proposed requirement would assist in a determination by the market administrator that payments to a producer or to a cooperative association have been accomplished. Payment by cash, check, or money order would not necessarily reflect the ultimate transaction. While payment made by any of these means might appear to discharge a particular obligation, we know of no way of ascertaining whether such payments properly have been made other than by the verification process. The market administrator must do this now, and it is not readily apparent that proponent's proposal would aid significantly in this determination.

The proposed provision would appear to apply uniformly to all handlers. It seems clear, however, from the testimony that uniform application is not intended. Instead, proponent would have the market administrator apply the provision selectively at the discretion of the cooperative association supplying the particular handler. Such a condition would be incompatible with the responsibility and authority of the Secretary in administering and enforcing order provisions. Such action, therefore, may not be authorized.

For the foregoing reasons, the proposal is denied.

4. *Charges on overdue accounts.* The present four-tenths of 1 percent per month charge prescribed under the order on overdue obligations to the producer-settlement fund should be increased to three-fourths of 1 percent per month.

A witness for a cooperative association testified that a charge of only four-tenths of 1 percent per month is unrealistic in light of present day commercial rates for carrying charges. By withholding obligations to the producer-settlement fund, handlers could obtain a source of short-term operating funds at an unduly low rate. Proponent testified that the lower rate now provided could encourage delinquency in payment of producer-settlement fund obligations.

Proponent cited varying rates currently being charged by lenders for a range of credit transactions. However, in borrowing money for guaranteeing payment to producers, proponent testified that the association currently must pay about 10 percent interest on an annual basis.

The charge made on unpaid obligations is not a substitute for prompt payment as required by the Act and the order. Its purpose is to encourage prompt settlement of accounts by counteracting any failure by handlers to make prompt payments.

It is essential that payments to the producer-settlement fund be made promptly so that the market administrator will have funds to make required payments out of the producer-settlement fund. A charge to encourage such payment should apply not only to original obligations payable to the producer-settlement fund, but also to overdue obligations to the fund stemming from audit adjustments. If a handler refuses or fails to file a report from which his obligation to the producer-settlement fund is computed, a charge for unpaid obligations should be made on any payments due the market administrator as though the report had been filed when due. Otherwise, handlers would be provided an incentive to be delinquent in filing their reports.

Also, some handlers can have an advantage over other handlers when such obligations are not paid on the due date, because they can then use such monies as an inexpensive source of operating capital. Other persons are affected also in that payments from the producer-settlement fund would have to be reduced pro rata until the obligations to such fund were paid.

A charge of three-fourths of 1 percent per month is a reasonable rate to encourage prompt settlement of accounts when due. It is in line with the prevailing annual rate of 10 percent on short-term commercial borrowings in this area.

5. *Miscellaneous provisions*—(a) *Duties.* The duties of the market administrator should provide for the announcement of the producer butterfat differential presently computed pursuant to § 1061.81. This information is available at the same time as the uniform price, and it is currently being announced with the uniform price even though its announcement is not specifically provided among the market administrator's duties at this time.

(b) *Reports.* The market administrator should report by the 20th day after the end of the month to each cooperative association, which so requests, the amount and classification of milk received by each handler from cooperative association member producers. The report should show the quantity of milk received by a handler from producer members of the association and the quantity assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler.

One of the chief purposes of a Federal milk order is to insure an adequate supply of Class I milk to the handlers regulated by the order. If one handler is short of milk and another handler is using relatively large quantities of milk in Class II, the cooperative associations supplying the market should be able to shift member producer milk supplies within the market. This aids in maintaining the highest possible Class I utilization for the market. The information provided by the report proposed herein will assist the cooperative associations in marketing milk more effectively.

The order also defines the obligations of a handler operating a partially regulated distributing plant. In order for the market administrator to determine the obligation of such person under the order, it is necessary that such handler file his producer payroll report with the market administrator if he elects the option provided in the order of having his order obligation computed as though his plant were a pool plant. Provision for such report is made herein.

(c) *Supply plant.* A supply plant should be defined as any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which Grade A milk is moved to a distributing plant. At present, the order provides for the movement of such milk to a "plant". The change proposed herein will designate more specifically the intent of the definition as indicated in the decision promulgating the order (34 F.R. 3812).

(d) *Other source milk.* A modification of the "other source milk" definition should be provided. Among the items included under the other source milk definition of the order are plant receipts, from any source, of manufactured dairy products (principally Class II), which are reprocessed, repackaged, or converted to another product during the month.

This provision is designed to require handlers to keep records and to account for the nonfluid products from other sources under the circumstances described in order that, to the extent that they are converted in the handler's plant to a higher valued use, the increment of increased value will be reflected in the total value of producer milk. Without such requirement, for example, a handler by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid milk products could gain a competitive advantage over other handlers in the market. The provision should be clarified to include any disappearance of

products other than fluid milk products that are in a form which may be converted into fluid milk products and for which specific use cannot be verified by the administrator.

(e) *Allocation.* The order should provide that there shall be no obligation on milk received at a pool plant from an unregulated supply plant if such milk has been priced as Class I milk under this or any other Federal order.

Bulk milk could be transferred, for example, from a pool plant under this or another order to a nonfederally regulated plant and, on the basis of its ultimate utilization, be classified and priced as Class I milk. The unregulated plant, in turn, could transfer bulk or packaged milk to a Dairyland order pool plant.

To the extent that this or an equivalent amount of milk has been priced as Class I milk under a Federal order, the Dairyland regulated handler receiving the milk should not have a further pool obligation on such milk. On any unpriced milk received from an unregulated supply plant the Dairyland handler would continue to have an obligation to the producer-settlement fund at the difference between the Class I price and the uniform price, as now provided by the order.

(f) *Computation of the uniform price.* In the computation of the uniform price, the provision instructing the market administrator to exclude the report of a handler who had not paid his producers individually the uniform price announced the previous month should be deleted.

Procedures are established to assure that all handlers comply with each provision of the order, including the requirement for the payment of the uniform price to producers by specified dates. These procedures include, among others, legal action against violations. However, the fact that some handler had not paid his producers the previous month's uniform price does not affect directly the operation of the producer-settlement fund or the ability of the market administrator to compute the uniform price.

The computation of the uniform price normally cannot await until a handler has paid producers, and, therefore, should not be a determining factor in whether the handler is performing in a manner to have his receipts of milk reflected in the current price computation.

(g) *Administrative expense.* The Act provides that the administrative cost of an order shall be borne by handlers, including cooperative associations in their capacity as handlers.

In this market, a number of cooperative associations operate plant facilities and they are handlers under the order. In this capacity they are quite similar in operation to proprietary handlers operating plants. Nevertheless, it is readily apparent, in the competitive situation existing in this market, that if the administrative assessment on bulk transfers from such a cooperative plant to a proprietary handler were levied only on the operating cooperative, this value would become a bargaining tool whereby all such cooperatives simply would outbid any bargaining cooperative for outlets with proprietary handlers. Thus, any proprietary handler could avoid the burden of administrative cost simply by purchasing milk only from a cooperative association which also happens to be a handler.

Under such circumstances, the bargaining cooperative might be forced to absorb the administrative cost (even though levied directly on the handler), risking violation of the order as the only practical means of retaining its accounts.

For the reasons stated above, it is concluded that the administrative expense provisions should be changed to provide that a handler shall pay the administrative expense on milk received from a cooperative association in its capacity as a handler on farm bulk tank milk and on milk transferred in bulk to a pool plant from a plant owned and operated by the cooperative association. A cooperative association would pay the administrative assessment only on its receipts for which the assessment is applicable and for which such assessment is not to be paid by other handlers.

(h) *Conforming changes.* The proposed changes contained herein include certain conforming and qualifying changes, including the deletion of obsolete provisions. These changes are necessary to effectuate the findings and conclusions made herein. Except for the terms of the order previously discussed, these changes of conforming nature will not affect the scope of the order or its application to any handler subject therewith.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southeastern Minnesota-Northern Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1061.10 is revised as follows:

§ 1061.10 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a distributing plant.

2. In § 1061.11, paragraph (b)(3) is revoked, and the introductory text, paragraph (a) (1) and (2), and paragraph (b)(2) are revised as follows:

§ 1061.11 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except an exempt distributing plant, the plant of a handler exempted pursuant to § 1061.60 or the plant of a producer-handler: *Provided,* That if a portion of a plant is operated separately from the Grade A portion of such plant and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section: *And provided further,* That facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a pool plant or part of a pool plant pursuant to this section.

(a) * * *

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area either as route disposition or moved as packaged fluid milk products to other plants from which it is disposed of in the marketing area as route disposition. Such

disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 15 percent during the months of February–August and 20 percent during the months September–January of such receipts is disposed of as Class I milk either as route disposition or moved in the form of packaged fluid milk products to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) * * *

(2) In determining the pool plant qualifications of a cooperative association's plant, member producer milk of such association which is delivered directly to plants described in paragraph (a) of this section shall be considered for purposes of this paragraph as having been first received at the cooperative's plant subject to the following conditions:

(i) Written request is made to the market administrator by the cooperative association prior to or during the month, designating the plant to be a pool plant pursuant to this subparagraph for the month, and for each month thereafter, until such request is withdrawn or terminated pursuant to subdivision (ii) of this subparagraph;

(ii) Any such plant which in a succeeding month is pooled under the provisions of another order issued pursuant to the Act shall not be pooled under this subparagraph for the ensuing 12 months.

* * * * *

3. Section 1061.12(c) is revised as follows:

§ 1061.12 Nonpool plant.

* * * * *

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

* * * * *

4. Section 1061.13(e) is revised as follows:

§ 1061.13 Handler.

* * * * *

(e) Any person in his capacity as the the operator of an other order plant from which during the month fluid milk products are either disposed of as route disposition in the marketing area or shipped to a pool plant; and

* * * * *

5. Section 1061.14 is revised as follows:

§ 1061.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant from which Class I milk of his own production is disposed of as route disposition in the marketing area, and who receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts by plant transfer from pool plants and who receives no nonfluid milk products from any source for use in reconstituted fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk and milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are wholly the personal enterprise and risk of such person.

6. In § 1061.18, paragraph (b) is revised as follows:

§ 1061.18 Other source milk.

* * * * *

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month and any disappearance of products other than fluid milk products which are in a form in which they may be converted into fluid milk products and for which specific use cannot be verified by the market administrator.

§ 1061.22 [Amended]

7. In § 1061.22, paragraph (i) is revised as follows:

(i) On or before the 12th day after the end of each month, announce the uniform price computed pursuant to § 1061.71 and the producer butterfat differential pursuant to § 1061.81, and notify each handler of his obligations to the producer-settlement fund;

8. In § 1061.22, delete "and" at the end of paragraph (k), replace the period at the end of paragraph (l) with a semicolon, and add a new paragraph (m) as follows:

(m) On or before the 20th day of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1061.13(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1061.46(a) (1) through (10) and the corresponding steps of § 1061.46(b).

9. Section 1061.30(b) is revised as follows:

§ 1061.30 Monthly reports of receipts and utilization.

* * * * *

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat disposed of as route disposition inside and outside the marketing area that are classified as Class I; and

* * * * *

10. In § 1061.44(d), subparagraph (3) is revised as follows:

§ 1061.44 Transfers.

* * * * *

(d) * * *

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1061.46(a)(8) and the corresponding step of § 1061.46(b), shall be assigned first to the skim milk and butterfat in fluid milk products so transferred or diverted from pool plants, and thereafter pro rata to such receipts from other order plants;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to receipts of fluid milk products from plants fully regulated by such order, and thereafter pro rata to such receipts from pool plants and other order plants not regulated by such order.

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph (exclusive of transfers of fluid milk products to pool plants and other order plants) shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and all remaining Class I utilization (including transfers of fluid milk products to pool plants and other order plants) shall be assigned pro rata to unassigned receipts as such nonpool plant from all pool and other order plants; and

* * * * *

§ 1061.46 [Amended]

11. In § 1061.46(a), subparagraphs (1), (3), (6), (7), (8), and the introductory text of (5)(i) are revised as follows:

(a) * * *

(1) Substract from the total pounds of skim milk classified:

(i) From Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(ii) From Class II the pounds of skim milk classified as Class II pursuant to § 1061.41(b)(6);

* * * * *

(3) Subtract from the remaining pounds of skim milk in Class I, the

pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

* * * * *

(5) * * *

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (1) (i) of this paragraph;

* * * * *

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) (ii) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (1) (i) or (5) (i) of this paragraph;

12. In subdivision (i) of paragraph (a) (9) of § 1061.46 change "1061.22(i)" to "§ 1061.22(j)".

13. Section 1061.60 is revised as follows:

§ 1061.60 Plants subject to other Federal orders.

The provisions of this order shall not apply with respect to the plant of a handler that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1061.11 and a greater volume of fluid milk products is disposed of from such plant as route disposition in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order.

§ 1061.61 [Amended]

14. In § 1061.61, paragraphs (a) (1) and (2) and (b) (1) and (2) are revised as follows:

(a) * * *

(1) Determine the obligation that would have been computed pursuant to § 1061.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Receipts at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plants;

(ii) Transfers from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the nonpool plant in the class to which allocated at the fully regulated plant;

(iii) Any transfers described in subdivision (ii) of this subparagraph that are classified as Class I milk shall be priced as follows:

(*a*) Such Class I transfers shall not be subject to obligation at the partially regulated distributing plant if the operator of the transferee pool plant or other order plant is not obligated under the applicable order because such transfer is treated under such order as milk received at the partially regulated distributing plant from a plant fully regulated by an order issued pursuant to the Act where it has been priced as Class I milk; and

(*b*) Remaining Class I transfers, to the extent that such do not exceed Grade A receipts from dairy farmers at the partially regulated distributing plant and at a plant described pursuant to subdivision (v) of this subparagraph shall be priced at the uniform price of the respective order (or at the weighted average price if the order provides such price).

(iv) Unless subdivision (v) of this subparagraph applies, the obligation for the partially regulated distributing plant shall include the charge specified in § 1061.70(f) and the credit specified in § 1061.83(b) (2) with respect to receipts of Class I milk from another nonpool plant which serves as a supply plant for such partially regulated distributing plant: *Provided,* That if Class I transfers to fully regulated plants pursuant to subdivision (iii) of this subparagraph remain after the application of subdivision (iii) (*b*), the charge pursuant to § 1061.70 (f) and the credit pursuant to § 1061.83 (b) (2) shall not apply pursuant to this paragraph to such remaining amount.

(v) If the operator of the partially regulated distributing plant so requests, the obligation for such plant shall include a similar obligation for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by making shipments to such plant during the month equivalent to the requirements of § 1061.11(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to § 1061.30 similar reports for such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The obligation for such nonpool plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for Grade A milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1) (v) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for Grade A milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of an unregulated supply plant if subparagraph (1) (v) of this paragraph applies to such plant.

(b) * * *

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant;

(i) As Class I milk from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

15. In the introductory paragraph of § 1061.61, change "§ 1061.31(c)" to "§ 1061.31 (c) and (d)".

16. In § 1061.70, paragraph (f) is revised as follows:

§ 1061.70 Computation of the net pool obligation of each handler.

* * * * *

(f) Add the value at the Class I price with respect to skim milk and butterfat subtracted from Class I pursuant to § 1061.46(a) (8) and the corresponding step of § 1061.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

17. In § 1061.71, paragraph (a) is revised as follows:

§ 1061.71 Computation of uniform price.

* * * * *

(a) Combine into one total the values computed pursuant to § 1061.70 for all handlers who filed reports pursuant to §§ 1061.30 and 1061.31(b) for the month and who made payments pursuant to § 1061.83 for the preceding month;

* * * * *

18. Section 1061.90 is revised as follows:

§ 1061.90 Expense of administration.

As his pro rata share of the expense of administration, each handler shall pay

to the market administrator on or before the 14th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant of another handler) with respect to his receipts of producer milk (including such handler's own-farm production, and milk received in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1061.46(a) (4) and (8) and the corresponding steps of § 1061.46 (b);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.10(b), and other order plants assigned to such disposition.

19. Section 1061.92 is revised as follows:

§ 1061.92 Adjustment of overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1061.61, 1061.83, and 1061.85 shall be increased three-fourths of 1 percent for each month or portion thereof that such obligation is overdue: *Provided,* That,

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Signed at Washington, D.C., on January 6, 1971.

JOHN C. BLUM,
Deputy Administrator
Regulatory Programs.

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FEDERAL POWER COMMISSION

[18 CFR Parts 201, 260]

[Docket No. R-411]

ACCOUNTING AND RATE TREATMENT OF ADVANCE PAYMENTS TO SUPPLIERS FOR EXPLORATION AND LEASE ACQUISITION OF GAS PRODUCING PROPERTIES

Notice of Proposed Rule Making

JANUARY 8, 1971.

1. Notice is hereby given, pursuant to section 553 of title 5 of the United States Code and sections 4, 5, 7, 15, and 16 of the Natural Gas Act (52 Stat. 822, 823, 824, 825, 829, and 830 (1938); 56 Stat. 83, 84 (1942); 61 Stat. 459 (1947); 76 Stat. 72 (1962); 15 U.S.C. 717c, 717d, 717f, 717n, and 717o) that the Commission is proposing to amend its regulations under the Natural Gas Act so as to provide for accounting and rate treatment of advance payments made to suppliers by pipelines for gas to be delivered at a future date.

2. This issue was formerly before the Commission and treated in Order No. 410 issued October 2, 1970 (35 F.R. 15908, Oct. 9, 1970); however in subsequent Order No. 410-A issued January 8, 1971, in response to petitions for rehearing and clarification, the Commission deemed it appropriate to offer all parties further opportunity to comment on Account 166, including a proposed modification thereof, and establishment of a separate Account 167 treating advances for exploration and lease acquisition costs.

3. The advance payments treated in this notice are amounts paid to others, including affiliated companies, for exploration, development, or production of natural gas (which amounts are to be repaid by delivery of gas.) Such payments are made prior to initial gas deliveries, or if the agreement provides for advances on a well by well basis, each incremental payment must be made prior to deliveries from an incremental well, or prior to Federal and/or State authorization, as appropriate.

4. The Commission hereby renotices Account 166 as promulgated in R-380. As an alternative, the Commission will determine whether to amend Account 166 in accordance with alternate B, infra.

5. The Commission will determine whether any working interest received by a company or a company's affiliated producer as a result of advance payments for exploration and/or lease acquisition shall bar such payments from inclusion in the rate base, and whether these interests shall be included in production accounts.

6. Where an economic interest other than a working interest is received by a pipeline in return for advances made for exploration and lease acquisition, it will be determined whether such advances will be treated as a rate base item, and any realization therefrom to be included in the appropriate revenue account so as to reduce the cost of service. The propriety of the particular advancement may be an issue in a pipeline's rate case.

7. It will be determined whether the pipeline's option of treating such advance payments as a rate base item will be available only at the time the payments are made.

8. It is further proposed that provisions for the reduction of advance payments following commencement of deliveries, the treatment of non-recoverable advance payments, the treatment of recovered advance payments and the full disclosure of related information be treated similarly to that in Order No. 410-A issued January 8, 1971, without change.

9. The purpose of these proposals is to assure that appropriate benefits accruing from advance payments for exploration and lease acquisition are passed on, if successful, to those who contribute to the advancements. The Commission therefore will determine whether to re-promulgate Account 166 as stated in Alternate A given below or under Alternate B add a new Account 167, Advance Payments for Gas (Exploration and Lease Acquisition) and modify Account 166 in the Uniform System of Accounts prescribed for Class A and Class B Natural Gas Companies, Part 201, Subchapter F, Chapter I, Title 18 of the Code of Federal Regulations, which alternates are presented as follows:

ALTERNATE A

166 Advance payments for gas.

A. This account shall include all advance payments made for gas (whether called "advance payments," "contribution," or otherwise) to others, including advances to affiliated or associated companies, for exploration (including lease acquisition costs), development, or production of natural gas, when such advance payments are to be repaid by delivery of gas. Under each agreement with payee, such payments must be made prior to initial gas deliveries, or if the agreement provides for advances on a well by well basis, each incremental payment must be made prior to deliveries from an incremental well, or prior to Federal and/or State authorization, as appropriate. Noncurrent advance payments not to be repaid in gas within a two-year period shall be reclassified and transferred to account 124, Other Investments, for balance sheet purposes. This transfer is for reporting purposes only and has no effect on accounting or rate making.

B. This account shall include advances to a pipeline affiliated producer obtaining a working interest in any production activity. When a pipeline obtains a working interest as a result of advance payments to producers, such advances shall be included in the appropriate production accounts.

C. Outstanding advance payments should be fully reduced within a reasonable period of time following commencement of deliveries. A sufficient portion of all gas taken should be credited to outstanding advance payments so as to eliminate the advance within a 5-year period or as otherwise authorized by the Commission upon request by the pipeline company. The reduction of the outstanding advance payments should not be dependent on a buyer purchasing more than 100 percent of the minimum take or pay quantity provided in the contract.

D. This account must be credited by the amount of advances which become nonrecoverable at the time such amounts are recognized as nonrecoverable. Nonrecoverable advance payments significant in amount may be charged to Account 435, Extraordinary Deductions, or

when authorized by the Commission, charged to Account 186, Miscellaneous Deferred Debits, and Amortized to Account 813, Other Gas Supply Expenses. Nonrecoverable advance payments insignificant in amount should be charged directly to Account 813 in the year recognized as nonrecoverable.

E. Recovered advance payments shall be credited to this account and charged to the appropriate gas purchase account.

F. Whenever as a result of advances included in this account, a pipeline obtains any interest in leases, operations or findings of a producer (including an affiliated producer), any income or return from such interest must be credited to this account, as received, to the extent that there is any amount of the related advance unrecovered, Any income or return in excess of a fully recovered advance is to be credited, first, to this account to the extent that there are any nonrecoverable advance payments outstanding. Second, an amount up to the total of all nonrecoverable advances that may have been amortized is to be credited to Account 813, Other Gas Supply Expenses. Third, if there is any excess after fully satisfying the recovery of the related advance and all nonrecoverable advances as hereinbefore indicated, such excess shall be credited to Account 421, Miscellaneous Nonoperating Income, except that an amount computed at 7 percent, simple interest, of (1) the outstanding unrecovered advance payments over the period that such payments are included in this account, and of (2) the nonrecoverable advance payments from the time that such payments were included in this account, shall be credited to Account 495, Other Gas Revenues. The computation of the applicable amount of such interest shall be made over the entire period that the related advance payment or unrecovered balance thereof had been recorded in this account, and the period that the nonrecoverable advance payments were first included in this account until the time fully recovered by the company from interests obtained from other advances. If the income or return is received in other than money, then it shall be included at the market value of such assets received.

G. No transfers shall be made from this account to any other account, unless otherwise provided herein, except as authorized by the Commission upon request by the pipeline company.

H. Three copies of any agreement concerning advance payments will be filed with the Secretary within 30 days of the initial related entry in Account 166.

NOTE: To keep the Commission informed on any activities or circumstances which cause the repayment of an advance in other than gas or when an advance is nonrecoverable by any means, the company must submit the full details involved as soon as such change becomes known.

ALTERNATE B

Proposed modifications to Account 166 as follows:

1. The account title to be changed to:

166 Advance payments for gas development and production.

* * * * *

2. First sentence of paragraph A after the word "companies," delete the words "for exploration (including lease acquisition costs),".

3. Paragraph B to be revised to read:

B. Under no circumstances shall this account include any amounts where a company or a company's affiliated producer shall obttain a working interest other than to receive deliveries of gas, in a lease, operations or findings of a producer receiving advances included herein.

A new account for exploration to be added as follows:

167 Advance payments for gas exploration.

A. This account shall include all advance payments made for gas (whether called "advance payments," "contribution," or otherwise) to others, including advances to affiliated or associated companies, for exploration (including lease acquisition costs) of natural gas, when such advance payments are to be repaid by delivery of gas. Payments included in this account shall be so included at the time of advancement. Under each agreement with payee, such payments must be made prior to initial gas deliveries, or if the agreement provides for advances on a well by well basis, each incremental payment must be made prior to deliveries from an incremental well, or prior to Federal and/or State authorization, as appropriate. Noncurrent advance payments not to be repaid in gas within a 2-year period shall be reclassified and transferred to Account 124, Other Investments, for balance sheet purposes. This transfer is for reporting purposes only and has no effect on accounting or rate making.

B. This account shall not include any amounts where a company or a company's affiliated producer shall obtain any working interest in leases, operations or findings of a producer receiving advances. Advances where such working interest is obtained shall be included in production accounts.

C. Whenever as a result of advances included in this account, a pipeline obtains any interest in leases, operations or findings of a producer (including an affiliated producer) other than a working interest, any income or return from such interest must be credited to this account, as received, to the extent that there is any amount of the related advance unrecovered. Any income or return in excess of a fully recovered advance is to be credited, first, to this account to the extent that there is any nonrecoverable advance payments outstanding. Second, an amount up to the total of all nonrecoverable advances that may have been amortized is to be credited to Account 813, Other Gas Supply Expenses. Third, if there is any excess after fully satisfying the recovery of the related advance and all nonrecoverable advances as hereinbefore indicated, such excess shall be credited to Account 421, Miscellaneous Nonoperating Income, except that an amount computed at 7 percent, simple interest, of (1) the outstanding unrecovered advance payments over the period that such payments are included in this account, and of (2) the nonrecoverable advance payments from the time that such payments were included in this account, shall be credited to Account 495, Other Gas Revenues. The computation of the applicable amount of such interest shall be made over the entire period that the related advance payment or unrecovered balance thereof had been recorded in this account, and the period that the nonrecoverable advance payments were first included in this account until the time fully recovered by the company from interests obtained from other advances. If the income or return is received in other than money, then it shall be included at the market value of such assets received.

D. Outstanding advance payments should be fully reduced within a reasonable period of time following commencement of deliveries. A sufficient portion of all gas taken should be credited to outstanding advance payments so as to eliminate the advance within a 5-year period or as otherwise authorized by the Commission upon request by the pipeline company. The reduction of the outstanding advance payments should not be dependent on a buyer purchasing more than 100 percent of the minimum take or pay quantity provided in the contract.

E. This account must be credited by the amount of advances which become nonrecoverable at the time such amounts are recognized as nonrecoverable. Nonrecoverable advance payments significant in amount may be charged to Account 435, Extraordinary Deductions, or when authorized by the Commission, charged to Account 186, Miscellaneous Deferred Debits, and Amortized to Account 813, Other Gas Supply Expenses. Nonrecoverable advance payments insignificant in amount should be charged directly to Account 813 in the year recognized as nonrecoverable.

F. No transfers shall be made from this account to any other account, unless otherwise provided herein, except as authorized by the Commission upon request by the pipeline company.

G. Recovered advance payments shall be credited to this account and charged to the appropriate gas purchase account.

H. This account shall be maintained in such a manner as to allow full disclosure of each advance payment.

I. Three copies of any agreement concerning advance payments will be filed with the Secretary within 30 days of the initial related entry in Account 166.

NOTE: To keep the Commission informed on any activities or circumstances which cause the repayment of an advance in other than gas or when an advance is nonrecoverable by any means, the compny must submit the full details involved as soon as such change becomes known.

10. Until the conclusion of these rulemaking proceedings, we have determined that advances by pipelines to independent producers for exploration and lease acquisition costs will be assured of accounting and rate treatment pursuant to Order 410–A. With regard to advance payments by pipelines to their own affiliates for exploration and lease acquisition costs in this interim, we will reserve for determination in the order or orders, if any, in R–411 whether such advances will be assured of rate treatment pursuant to Order 410–A. Advances to independent producers and to affiliates for development in this interim will be assured of accounting and rate treatment pursuant to Order 410–A. Advances to independent producers and to affiliates subsequent to the issuance of order in R–411 will be controlled by the order, if any, in Docket No. R–411.

11. So that the reporting of the Class A and Class B companies under Part 260, Statements and Reports (Schedules) will comply with the above proposed changes in the Uniform System of Accounts as indicated above, the Commission proposes that effective for the reporting year 1970, Schedule pages 110, and 210B of FPC Form No. 2, Annual Report for Natural Gas Companies, Class A and Class B, prescribed by § 260.1 Chapter 1, Title 18 of the Code of Federal Regulations be amended as follows, all as set out in the attachments hereto: [1]

(1) Schedule page 110, Comparative Balance Sheet, be amended by revising line 23 to read "Advance Payments for Gas Development and Production (166)", inserting line 24 "Advance Payments for Gas Exploration (167)", and renumbering succeeding lines, all as shown in Attachment A.[1]

(2) Schedule page 210B, Advance Payments for Gas Prior to Initial Deliveries or Commission Certification, be amended by revising the words at the end of the Schedule title to read "(Accounts 124, 166, and 167)", by revising lines 2 and 3 of paragraph 1 of the instructions to refer to "Accounts 166, Advance Payments for Gas Development and Production and 167, Advance Payments for Gas Exploration", by adding a reference to Account 167 in the fourth line of paragraph 1 of the instructions, and by revising the column heading of column (b) to refer to Accounts 124, 166, or 167, all as shown in Attachment B.[1]

12. The revision of the Commission's Regulations is proposed to be issued under the authority granted to the Federal Power Commission by the Natural Gas Act, as amended particularly sections 4, 5, 6, 15, and 17 thereof (52 Stat. 822, 824, 825, 829, and 830 (1938); 56 Stat. 83, 84 (1942); 61 Stat. 459 (1947); 76 Stat. 72 (1962); 15 U.S.C.s, 717 c, d, f, n, and o).

13. Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than February 16, 1971, views and comments in writing concerning the alternatives here proposed or any other appropriate alternative thereto. Operating, technical and economic data and views on the proposals are solicited. Any such submittal should contain the name, title, and mailing address of the person or persons to whom communications concerning the matter should be addressed. An original and 14 copies of all submittals should be filed. Responses to the submittals may be filed not later than March 16, 1971, in the same form and number as the original submittals. After receipt and analysis of the written submittals by our staff, a conference of interested persons or representatives of interested groups with common interests, and our staff may be held. The Commission will consider all such written submittals and responses before issuing an order in this proceeding. All comments, petitions, and answers previously filed in rulemaking proceedings regarding Docket No. R–380 will be considered as part of the record in Docket No. R–411.

14. The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

GORDON M. GRANT,
Secretary.

[FR Doc.71–450 Filed 1–11–71;8:49 am]

[1] Attachments A and B filed as part of the original document.

FEDERAL TRADE COMMISSION

[16 CFR Part 430]

BILLING PRACTICES ARISING OUT OF ADMINISTRATION OF CUSTOMER ACCOUNTS BY CREDIT CARD ISSUERS AND OTHER RETAIL ESTABLISHMENTS

Notice of Postponement of Hearing Date Concerning Proposed Trade Regulation Rule

The Federal Trade Commission has postponed indefinitely the public hearings scheduled for January 25 and 26, 1971, relating to the proposed Trade Regulation Rule concerning billing practices arising out of the administration of customer accounts by credit card issuers and other retail establishments, published on October 8, 1970 (35 F.R. 15842).

The public record will remain open until further notice for submission of written data, views, or arguments concerning the proposed rule. Written data, views, or arguments may be filed with the Assistant Director, Division of Industry Guidance, Bureau of Consumer Protection, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, DC 20580. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit 20 copies.

Issued: January 7, 1971.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[FR Doc.71–367 Filed 1–11–71;8:48 am]

[16 CFR Part 432]

POWER OUTPUT OF AMPLIFIERS UTILIZED FOR HOME ENTERTAINMENT PRODUCTS

Notice of Public Hearing and Opportunity To Submit Data, Views, or Arguments Regarding Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 et seq., and the provisions of Part 1, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.11 et seq., has initiated a proceeding for the promulgation of a Trade Regulation Rule relating to the advertising of power output of sound power amplification equipment for home entertainment products.

Accordingly, the Commission therefore proposes the following Trade Regulation Rule:

Sec.
432.1 Scope.
432.2 Required disclosures.
432.3 Optional disclosures.
432.4 Prohibited disclosures.
432.5 Liability for violation.

AUTHORITY: The provisions of this Part 432 issued under 38 Stat. 717, as amended; 15 U.S.C. 41–58.

§ 432.1 Scope.

(a) This part shall apply whenever any power output (in watts or otherwise), power band or power frequency response, or distortion capability or characteristic is represented, either expressly or by implication, in connection with the advertising, sale, or offering for sale, in commerce as "commerce" is defined in the Federal Trade Commission Act, of sound power amplification equipment manufactured or sold for home entertainment purposes, such as for example, radios, record and tape players, radio-phonograph and/or tape combinations, component audio amplifiers and the like.

(b) It is an unfair method of competition and an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. section 45(a)(1)) to violate any applicable provision of this part.

§ 432.2 Required disclosures.

Whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment, the following disclosures shall be made clearly, conspicuously, and more prominently than any other representations or disclosures permitted under this part:

(a) The manufacturer's rated minimum sine wave continuous RMS power output, in watts, per channel (if the equipment is designed to amplify two or more channels simultaneously)—

(1) For each load impedance required to be disclosed in paragraph (b) of this section, when measured with resistive load or loads equal to such (nominal) load impedance or impedances; and

(2) Measured with all associated channels fully driven to rated per channel power;

(b) The load impedance or impedances, in ohms, for which the manufacturer intends the equipment to be used by the consumer;

(c) The manufacturer's rated power band or power frequency response, in Hertz (Hz), for each rated power output required to be disclosed in paragraph (a) (1) of this section; and

(d) The manufacturer's rated percentage of maximum total harmonic distortion at any power level from zero (0) watts to the rated power output, for each such rated power output and its corresponding rated power band or power frequency response.

§ 432.3 Optional disclosures.

Other operating characteristics and technical specifications not required in § 432.2 may be disclosed, provided:

(a) Any other power output is rated by the manufacturer, is expressed in minimum watts per channel, and such power output representation(s) comply with the provisions of § 432.2(a)(1) through (d); except that if a peak or other instantaneous power rating, such as music power or peak power, is represented under this section, the maximum percentage of total harmonic distortion (see § 432.2(d)) may be disclosed only at such rated output: *And provided further,* That,

(b) All disclosures or representations made under this section are less conspicuously, and prominently made than the disclosures required in § 432.2; and

(c) The rating and testing methods or standards used in determining such representations are disclosed, are well known and generally recognized by the industry at the time the representation or disclosure is made, are neither intended nor likely to deceive or confuse the consumer, and are not otherwise likely to frustrate the purpose of this part.

NOTE 1: For the purpose of paragraph (b) of this section, optional disclosures will not be considered less prominent if they are either bold faced or are more than two-thirds the height of the disclosures required by § 432.2.

NOTE 2: Use of the asterisk in effecting any of the disclosures required by §§ 432.2 and permitted by 432.3 shall not be deemed conspicuous disclosure.

§ 432.4 Prohibited disclosures.

No performance characteristics to which this part applies shall be represented or disclosed if they are not obtainable as represented or disclosed when the equipment is operated by the consumer in the usual and normal manner without the use of extraneous aids.

§ 432.5 Liability for violation.

If the manufacturer, or in the case of foreign made products, if the importer or domestic sales representative of a foreign manufacturer, of any product covered by this part furnishes the information required or permitted under this part, then any other seller of the product shall not be deemed to be in violation of § 432.4 due to his reliance upon or transmittal of the written representations of the manufacturer or importer if such seller has been furnished by the manufacturer, importer, or sales representative, a written certification attesting to the accuracy of the representations to which this part applies: *And provided further,* That such seller is without actual knowledge of the violation contained in said written certification.

All interested persons, including the consuming public, are hereby notified that they may file written data, views, or arguments concerning the proposed rule with the Assistant Director, Division of Industry Guidance, Bureau of Consumer Protection, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, DC 20580, not later than April 6, 1971. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit 20 copies.

All interested persons are also given notice of opportunity to orally present data, views, or arguments with respect to the proposed rule at a public hearing to be held at 10 a.m., e.s.t., April 13, 1971, in Room 532 of the Federal Trade Commission Building, Washington, D.C. Mr. C. E. Aldhizer has been designated Commission Attorney for this proceeding.

Any person desiring to orally present his views at the hearing should so inform the Assistant Director, Division of Industry Guidance, not later than April 6, 1971, and state the estimated time required for his oral presentation. Reasonable limitations upon the length of time allotted to any person may be imposed. In addition, all parties desiring to deliver a prepared statement at the hearing should file such statement with the Assistant Director, Division of Industry Guidance on or before April 6, 1971.

The data, views, or arguments presented with respect to the practices in question will be available for examination by interested parties at the office of the Assistant Secretary for Legal and Public Records, Federal Trade Commission, Washington, D.C., and will be considered by the Commission in the establishment of a Trade Regulation Rule.

All interested persons, including the consuming public, are urged to express their approval or disapproval of the proposed rule, or to recommend revisions thereof, and to give a full statement of their views in connection therewith.

Issued: January 12, 1971.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[FR Doc.71-270 Filed 1-11-71;8:45 am]

Notices

DEPARTMENT OF THE INTERIOR

Geological Survey

[Utah 115]

UTAH

Coal Land Classification Order

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SALT LAKE MERIDIAN, UTAH

Coal Lands:

T. 41 S., R. 4 E.,
Secs 13 to 36, inclusive, in part unsurveyed.
T. 42 S., R. 4 E.,
Secs. 1 to 19, inclusive;
Sec. 20, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 21, N½, N½SW¼, SE¼;
Secs. 22 to 25, inclusive;
Sec. 26, NE¼, N½NW¼, SW¼NW¼, N½SE¼, SW¼SE¼;
Sec. 27, N½NE¼, SW¼NE¼, N½NW¼, SE¼NW¼;
Sec. 29, W½NE¼, W½, SE¼;
Secs. 30 to 32, inclusive;
Sec. 35, NE¼;
Sec. 36, N½N½.
T. 41 S., R. 5 E.,
Sec. 14, NE¼NW¼, unsurveyed;
Sec. 15, W½, W½SE¼, unsurveyed;
Sec. 16;
Secs. 17 to 22, inclusive, unsurveyed;
Sec. 23, SW¼SW¼, unsurveyed;
Sec. 24, SE¼NE¼, unsurveyed;
Sec. 25, S½NW¼, SW¼, unsurveyed;
Sec. 26, W½NE¼, SE¼NE¼, W½, SE¼, unsurveyed;
Secs. 27 to 31, inclusive, unsurveyed;
Sec. 32;
Secs. 33 and 34, unsurveyed;
Sec. 35, N½, N½SW¼, SE¼, unsurveyed;
Sec. 36, W½, SE¼.
T. 42 S., R. 5 E.,
Sec. 1, N½NE¼, NW¼NW¼, unsurveyed;
Sec. 2, lots 1 and 2;
Sec. 3, W½NE¼, NW¼, N½SW¼, NW¼SE¼, unsurveyed;
Secs. 4 to 9, inclusive, unsurveyed;
Sec. 10, W½, SE¼, unsurveyed;
Sec. 14, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼, unsurveyed;
Sec. 15, unsurveyed;
Sec. 16;
Secs. 17 to 23, inclusive, unsurveyed;
Sec. 24, SW¼NW¼, W½SW¼, SE¼SW¼, unsurveyed;
Sec. 25, NW¼, N½SW¼, SW¼SW¼, unsurveyed;
Secs. 26 and 27, unsurveyed;
Sec. 28, N½, N½SW¼, SE¼SW¼, SE¼, unsurveyed;
Sec. 29 N½, N½SE¼, unsurveyed;
Sec. 30, unsurveyed;
Sec. 31, N½N½, unsurveyed;
Sec. 33, NE¼, E½NW¼, NE¼SE¼, unsurveyed;
Sec. 34, N½NE¼, W½NW¼, NW¼SW¼, unsurveyed;
Sec. 35, NW¼NE¼, N½NW¼, unsurveyed.

Reclassified coal lands from noncoal lands:

Prior classification of the following lands as noncoal lands is hereby revoked and the lands are reclassified as coal lands:

T. 42 S., R. 5 E.,
Sec. 25, N½NE¼, SW¼NE¼, SE¼SW¼, SE¼, unsurveyed;
Sec. 34, NE¼SE¼; unsurveyed;
Sec. 35, NE¼NE¼, S½NE¼, SE¼NW¼, NW¼SW¼, unsurveyed;
Sec. 36, NW¼NE¼, N½NW¼, SW¼NW¼.

Noncoal Lands:

T. 42 S., R. 4 E.,
Sec. 20, SE¼SE¼;
Sec. 21, S½SW¼;
Sec. 26, SE¼NW¼, SW¼, SE¼SE¼;
Sec. 27, SE¼NE¼, SW¼NW¼, NE¼SE¼;
Sec. 28, N½, W½SW¼;
Sec. 29, E½NE¼;
Sec. 35, E½NW¼, SE¼;
Sec. 36, S½N½, S½.
T. 41 S., R. 5 E.,
Sec. 13, unsurveyed;
Sec. 14, NE¼, W½NW¼, SE¼NW¼, S½, unsurveyed;
Sec. 15, NE¼, E½SE¼, unsurveyed;
Sec. 23, N½, N½SW¼, SE¼SW¼, SE¼, unsurveyed;
Sec. 24, N½NE¼, SW¼NE¼, W½, SE¼, unsurveyed;
Sec. 25, NE¼, N½NW¼, SE¼, unsurveyed;
Sec. 26, NE¼NE¼, unsurveyed;
Sec. 35, S½SW¼, unsurveyed;
Sec. 36, NE¼.
T. 42 S., R. 5 E.,
Sec. 1, S½NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼, SW¼SE¼, unsurveyed;
Sec. 2, lots 3 and 4, S½N½, S½;
Sec. 3, E½NE¼, S½SW¼, NE¼SE¼, S½SE¼, unsurveyed;
Sec. 10, NE¼, unsurveyed;
Sec. 11, N½N½, unsurveyed;
Sec. 14, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼, unsurveyed;
Sec. 28, SW¼SW¼, unsurveyed;
Sec. 29, SW¼, S½SE¼, unsurveyed;
Sec. 31, S½N½, unsurveyed;
Sec. 32, N½;
Sec. 33, W½NW¼, NE¼SW¼, W½SE¼, SE¼SE¼, unsurveyed;
Sec. 34, S½NE¼, E½NW¼, NE¼SW¼, SW¼SW¼, unsurveyed.

The area described aggregates 70,351 acres, more or less, of which about 61,515 acres are classified coal lands, about 720 acres which were formerly classified noncoal lands are reclassified coal lands, and about 8,116 acres are classified noncoal lands.

W. A. RADLINSKI,
Acting Director.

JANUARY 5, 1971.

[FR Doc.71-335 Filed 1-11-71;8:46 am]

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce

ARMED FORCES INSTITUTE OF PATHOLOGY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71-00815-33-46040. Applicant: Armed Forces Institute of Pathology, Washington, D.C. 20305. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens A.G., West Germany.

Intended use of article: The article will be used for research on ocular and other body tissues that have been especially prepared and sectioned for ultrastructural studies. In addition, cell suspensions, tissue fragments, cytoplasmic organelles, chromosomes, bacteria, viruses, and fungi will constitute the material under investigation. The Ophthalmic Pathology Branch conducts a comprehensive training program for physicians in ophthalmic pathology, including the use of all modern methods of tissue examination.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We find that the additional resolving capability of the foreign article

is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-324 Filed 1-11-71;8:45 am]

BOSTON UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71-00048-33-46040. Applicant: Boston University Biology Department, 2 Cummington Street, Boston, MA 02215. Article: Electron microscope, Model JEM-100B. Manufacturer: Japan Electron Optics Lab., Co., Ltd., Japan.

Intended use of article: The article will be used for research concerning the aging of microcirculation, including changes in endothelial lining cells of small blood vessels, changes in smooth muscle of blood vessel walls and changes in elastic fibers and microfibrils of small blood vessels with age; for studies on blood platelets and thrombocytes related to the clotting and wound healing processes; and for studies on protozoa (Stentor) and demonstration of deoxyribonucleic acid (DNA) in the basal bodies of Stentor cells.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW), in its memorandum dated November 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We therefore find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-325 Filed 1-11-71;8:45 am]

CORNELL UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket 71-00055-38-46040. Applicant: Cornell University, 18 East Avenue, Ithaca, NY 14850. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens A.G., West Germany.

Intended use of article: The article will be used for studies on the structure of special thin graphite platelets to be used for substrates for very high resolution electron microscopy; biomolecular specimens, as molecular dispersions of enzymes, nucleic acids and the interaction of enzymes with nucleic acids; and also to study the resolution and contrast limits set by the various specimen preparative techniques such as negative and positive staining, shadowcasting and freeze etching.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We therefore find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-326 Filed 1-11-71;8:45 am]

MASSACHUSETTS GENERAL HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71-00058-33-46040. Applicant: Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Article: Electron microscope, Model EM 100B. Manufacturer: Japan Electron Optics Laboratory Co., Ltd., Japan.

Intended use of article: The article will be used for long on-going studies on the primary, secondary, and tertiary organization of structural macromolecules, principally collagen and myosin. Detailed structural analyses of the collagen molecule and its supramolecular aggregation, similar studies on the structure of muscle proteins, and studies of the molecular structure and function of the myosin molecule are projects using the electron microscope as a major tool.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the

numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We therefore find that the Model EMU–4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being maufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-327 Filed 1-11-71;8:45 am]

STANFORD UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71–00070–33–46040. Applicant: Stanford University, Purchasing Department, 820 Quarry Road, Palo Alto, CA 94304. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands.

Intended use of article: The aim of the research for which the article will be used is to elucidate the molecular structure of viruses, membranes and complex protein and nucleic acid molecules. Members of the Biochemistry Department are studying the synthesis of INA; the structure and multiplication of viruses; the mechanism of genetic recombination in viruses; and the structure of cell membranes.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU–4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU–4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We therefore find that the Model EMU–4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-328 Filed 1-11-71;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71–00056–33–46040. Applicant: University of California, Medical Center, Third and Parnassus, San Francisco, CA 94122. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands.

Intended use of article: The article will be used for research on a study of the relationship and interaction between the different tissues during the embryonogenesis; a study of isolated molecules by observing the ultrastructure of isolated macromolecules (proteins and nucleic acids) with relation to their biochemical activities; and for a project concerning the overall and subunit structure of proteins, and examining their interaction with other molecules, for example, nucleic acids (in the formation of chromosomes) or with other proteins (for example, in the formation of membranes).

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU–4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU–4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in its memorandum dated November 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We therefore find that the Model EMU–4B is not of equivalent scientific value to the foreign article for such purposes as article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-329 Filed 1-11-71;8:45 am]

UNIVERSITY OF HAWAII

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 70–00810–33–46040. Applicant: University of Hawaii School of Medicine, Department of Pathology, c/o Leahi Hospital, Young 5, 3675 Kilauea Avenue, Honolulu, HI 96816. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands.

Intended use of article: The article will be used for research concerned with ultrastructural appearances and the mode of formation of a pigment which occurs in disease states of man and experimental animals. The pigment is called ceroid (wax-like) and is derived by oxidative polymerization from unsaturated fats only. When deposited in vital organs and organelles of man, their function is interfered with a wide variety of human diseases and symptoms appear, particularly those associated with aging.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for

such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU–4B electron microscope which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU–4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We find that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU–4B is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-330 Filed 1-11-71;8:45 am]

National Oceanic and Atmospheric Administration

[Docket No. C-331]

VITO AND ANGELA POMILIA

Notice of Loan Application

JANUARY 5, 1971.

Vito Pomilia and Angela Pomilia, 83 Wakefield Avenue, Daly City, CA 94015, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 43.8-foot registered length wood vessel to engage in the fishery for salmon, albacore and Dungeness crab.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, DC 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-371 Filed 1-11-71;8:49 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-329, 50-330]

CONSUMERS POWER CO.

Notice of Receipt of Application for Construction Permit and Operating License

Consumers Power Co., 212 West Michigan Avenue, Jackson, Mich., pursuant to the Atomic Energy Act of 1954, as amended, has filed an application, dated January 13, 1969, for permits to construct and licenses to operate two pressurized water nuclear power reactors, designated as the Midland Plant, Units Nos. 1 and 2, at its site on the Tittabawasee River in Midland County, Mich., and adjacent to the Dow Chemical Co.'s main industrial complex in the city of Midland.

Each of the proposed reactors is designed for initial operation at approximately 2,452 thermal megawatts, with a total electrical output of approximately 1,325 megawatts plus 4,050,000 lbs./hr. of process steam.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after January 12, 1971.

A copy of the application and the amendments thereto are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Grace Dow Memorial Library, 1710 West St. Andrews Road, Midland, MI.

Dated at Bethesda, Md., this 31st day of December 1970.

For the Atomic Energy Commission.

FRANK SCHROEDER,
Acting Director,
Division of Reactor Licensing.

[FR Doc.71-180 Filed 1-11-71;8:45 am]

[Docket No. 50-377]

GULF ENERGY & ENVIRONMENTAL SYSTEMS, INC.

Notice of Application for and Proposed Issuance of Facility Export License

Please take notice that Gulf Energy & Environmental Systems, Inc., San Diego, Calif., has submitted an application dated December 9, 1970, for a license to authorize the export of a 250 kilowatt thermal TRIGA Mark I nuclear research reactor to the Medical University, Hanover, West Germany.

Upon finding that the reactor proposed for export is within the scope of and consistent with the terms of the Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community and, unless within 15 days after the publication of this notice in the FEDERAL REGISTER, a request for a hearing is filed with the U.S. Atomic Energy Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of Regulation will cause to be issued to Gulf Energy & Environmental Systems, Inc., a facility export license and cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Commission will issue a notice of hearing or an appropriate order.

Pursuant to the Atomic Energy Act of 1954, as amended, and Title 10, Chapter I, Code of Federal Regulations, the Commission has found that:

(a) The application complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations as set forth in Title 10, Chapter I, Code of Federal Regulations, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Commission does not evaluate the health and safety characteristics of the facility to be exported.

A copy of the application, dated December 9, 1970, is on file in the Atomic Energy Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

EBER R. PRICE,
Director, Division of State and Licensee Relations.

[FR Doc.71-370 Filed 1-11-71;8:48 am]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 21866, 22784; Order 71-1-26]

ALLEGHENY AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of January 1971.

By tariff revisions marked to become effective January 7, 1971,[1] Allegheny Airlines, Inc. (Allegheny), proposes to increase its present jet custom-class and propeller first-class fares in 113 markets

[1] Revisions to Airline Tariff Publishers, Inc., Agent Tariff CAB No. 136.

under 500 miles in distance which involve the Boston, New York, Washington/Baltimore, and Chicago terminals.[2] The increases range from $0.92 to $2.78. Allegheny also proposes to cancel all of its Discover America fares.

In justification of its proposal Allegheny alleges that increased fares in the markets selected are warranted to help offset continually rising costs resulting from airport and airway congestion and higher than usual station expenses; and that it experiences abnormally longer air traffic delays in and out of each of these airports, resulting in slower flying times and relatively higher costs. Allegheny estimates that its proposed adjustments in regular fares will increase its annual revenue by $3.24 million at 1970 traffic levels, and that cancellation of Discover America fares will result in additional revenues of $2.3 million annually although it indicates that this latter estimate is overstated since it assumes no loss of Discover America passengers.

Complaints against Allegheny's proposed fares[3] have been filed by Mr. Reuben B. Robertson III, and by Representative John E. Moss and 39 other Members of Congress, requesting investigation and suspension. The Robertson complaint alleges that the carrier has failed to demonstrate any showing of special need or any other economic or social justification for raising fares now in these markets; that the carrier did not submit justification for raising fares now in these markets; that the carrier did not submit justification in conformance with § 221.165 of the Board's economic regulations; and that Board action based on American's submissions cannot serve as justification, per se, for raising everyone's prices. The complaint also alleges that quite apart from the question of who is responsible for congestion and who must pay for it, no carrier should be permitted to profit from the existence of congestion unless it can demonstrate that it has not been able to turn a profit in high density markets despite efficient operations.

The Moss complaint touches on most of the points raised by Mr. Robertson, emphasizing that the carrier has failed to show that it is incurring losses in the markets in which it is proposing to increase fares, and that it has not furnished cost estimates necessary to support the allegation that increases are required to bring revenues more into line with the cost of service.

In answer to the complaints, Allegheny alleges that they are devoid of any factual basis or other cogent reasons for the suspension and investigation of its proposal; that there is ample justification for the proposed fare increases; that Allegheny has presented facts which show that New York, Chicago, Washington, and Boston schedules involve greater block times than trips of similar distance in less congested markets; that this experience at these points has contributed substantially to increased operating expenses in these markets; and that the complaints present nothing to show that these facts are incorrect or that they are irrelevant to Allegheny's request for selective fare increases. Allegheny further states its position that it need not show losses or load factor data in the markets involved, and that with regard to demand elasticity no meaningful estimates can be made.

Allegheny's proposal to increase certain normal fares comes within the scope of the Domestic Passenger-Fare Investigation now actively in process and the lawfulness of these fares will be determined in that proceeding. It is anticipated that a decision on the fare level and directly related issues will be reached by about April 1, 1971. The issue now before us is whether to permit to become effective or suspend these proposed fares pending a final determination of their lawfulness in that investigation.

The proposal involves the basic normal fares charged by Allegheny over a fairly substantial portion of its system. As such, it necessarily involves an evaluation of basic costs of service, including passenger load factors, now under review in the general investigation. In this respect the filing is similar to the tariffs filed by various domestic air carriers for effectiveness on October 15, 1970, and suspended by the Board pending investigation.[4] For similar reasons, we have decided to suspend Allegheny's filing except as set forth below.

We will permit the proposed increases in the following seven markets: New York-Baltimore, Boston-Philadelphia, New York-Pittsburgh, Washington-Hartford, Washington-Philadelphia, Boston-Washington, and Chicago-Pittsburgh. In our opinion, the information furnished by Allegheny, as well as other information available to the Board, adequately establishes that it experiences airport and airway congestion in these markets of a magnitude which results in costs atypical of those prevailing in the air transport system. Moreover, they are relatively high density in nature, are served by numerous flights and are operated by Allegheny at load factors generally above its system average—characteristics which would tend toward profitable operations. We will also permit increases as proposed in 20 other markets in which the Board has previously permitted increases for similar reasons. It is reasonable to assume that atypical costs previously demonstrated would equally affect any carrier operating in the same market. Finally, we will permit the carrier to cancel its Discover America fares, all of which are in markets under 1,500 miles consistent with our action in Order 70-11-93.

The Board will suspend the increased normal fares in the remaining markets included in Allegheny's proposal, many of which are relatively small in terms of traffic volume, in the absence of any showing of adverse operating conditions due to airport and airway congestion. In addition to this lack of evidence as to the specific markets, we note that Allegheny's reported system block-to-block speed with its two predominant aircraft types is at or slightly above the average for the local service industry as a whole, which would seem to indicate that its operations overall are not unduly affected by the problem of congestion. Finally, we are not persuaded that higher than usual station expenses such as landing fees, rent, and services warrant the selected increases sought here, at least prior to a full airing of the question in the structure phase of the investigation.

Upon consideration of all relevant matters, the Board finds that the proposed military fare increases, which stem from higher basic fares we are herein suspending, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. We further conclude that these fares should be suspended together with all other fare increases in the same markets pending investigation.[5]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the YM class fares and provisions described in Appendix A attached hereto,[6] and rules, regulations, or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A hereto[6] are suspended and their use deferred to and including April 6, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation of the military fares ordered herein is hereby consolidated into Docket 22784;

4. A copy of this order will be filed with the aforesaid tariffs and served upon Allegheny Airlines, Inc., and the complainants in Dockets 22905 and 22915; and

5. Except to the extent granted herein, the complaints in Dockets 22905 and 22915 insofar as they apply to the filings considered herein are dismissed.

[2] Various discount fares would be adjusted to maintain existing percentage relationships to coach fares.

[3] The complaints are also directed to selected short-haul fare increase proposals of Eastern, National, TWA, and United. These proposals will be disposed of by subsequent orders.

[4] Order 70-9-123.

[5] Markets wherein we are permitting the proposed increases to become effective are listed in the attachment which is filed as part of the original document.

[6] Filed as part of the original document.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[7]

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-368 Filed 1-11-71;8:48 am]

[Docket No. 22973; Order 70-12-164]

NEW ENGLAND SERVICE INVESTIGATION

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of December 1970.

This order implements the Board's decision in the Northwest-Northeast Merger Case to institute a New England Service Investigation to consider means of improving air service in New England. The considerations underlying our decision to institute this investigation are set forth in our opinion in the merger case and will not be repeated herein.

The New England Service Investigation will consider three main approaches to improving air service in New England. First, and of the most immediate importance, we will evaluate Northwest's plans for an initial pattern of service after the merger, and determine whether this pattern of service, together with the service of other authorized carriers, will satisfactorily meet the needs of the New England communities. From a longer range standpoint, we will also consider whether the New England routes Northwest will acquire as a result of the merger should be realigned to facilitate improved service, and whether the temporary replacement arrangements approved in Order 69-12-73, dated December 16, 1969, involving the suspension of Northeast and Mohawk, should be authorized on a more permanent basis.

To permit a thorough consideration of Northwest's plans to serve the New England routes, we will direct Northwest to submit, within 180 days of the date of the transfer of Northeast's certificates, a comprehensive plan for service to New England.[1] This service plan shall be served upon the chief executive of each community, the Governors of each State, and the State commissions having jurisdiction over air transportation. These parties will be afforded an opportunity to submit comments on Northwest's proposals. Thereafter, the Board will consider these submissions and determine whether any steps should be taken to require Northwest to provide an improved level of service.[2]

As indicated above, the New England Service Investigation will also consider whether the New England route structure should be realigned to permit improved service to the public and more efficient and economical operations.[3] To facilitate this aspect of the investigation we expect Northwest to submit, no later than 180 days from the date of certificate transfer, a proposed realignment (if deemed necessary) including all appropriate certificate applications.

Finally, we shall include in our investigation three applications filed by Northeast and Mohawk and already set for hearing[4] which seek certificate amendments involving, inter alia, various New England points at which the Board has authorized replacement service by Mohawk and/or an air taxi operator in place of the certificated operations previously offered by Northeast or Mohawk. This replacement service has been authorized for a temporary experimental period,[5] and in the New England Service Investigation we will evaluate the results of the experiment and determine whether these replacement arrangements furnish the best means for providing air service to the affected communities.

Accordingly, it is ordered, That:

1. An investigation, to be designated as the New England Service Investigation, be and it hereby is instituted in Docket 22973, pursuant to sections 204 (a), 401(g), and 404(a) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require the alteration, amendment, or modification of the certificates of public convenience and necessity for routes 27 and 27-F, to effect a realignment of the segments north of New York;

2. Northwest Airlines, Inc., be and it hereby is directed to file, with appropriate applications, a proposed realignment, if deemed necessary, of the New England route structure Northwest will acquire as a result of the merger, within 180 days of the date of transfer of Northeast's certificates to Northwest;

3. The applications of Northeast Airlines, Inc., in Dockets 21331 and 21332 and the application of Mohawk Airlines, Inc., in Docket 21333, be and they hereby are consolidated for hearing in the New England Service Investigation, Docket 22973;

4. Northwest Airlines, Inc., be and it hereby is directed to file a comprehensive service plan for all New England communities at which it is to be certificated, including schedules and the times thereof, within 180 days after the date of transfer of Northeast's certificates and objections to the service plan shall be filed no later than 30 days thereafter;

5. Northwest Airlines, Inc., shall serve a copy of its proposed realignment of the New England route structure and a copy of its comprehensive service plan on each air carrier serving one of the points affected, the chief executive of each community affected, the various state commissions having jurisdiction over air transportation, and the Governor of each State affected;

6. Motions to consolidate applications may be filed no later than 20 days after Northwest filed its comprehensive service plan and proposed realignment of the New England route structure and answers to such pleadings may be filed no later than 20 days thereafter; and

7. This investigation will be set for hearing at a time and place to be hereafter designated.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-369 Filed 1-11-71;8:48 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Director, Office of Field Services, Assistant Secretary for Domestic and International Business" to "Director, Office of Business Services, Domestic and International Business, Bureau of Domestic Commerce".

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-352 Filed 1-11-71;8:47 am]

[7] Concurring and dissenting statements of Vice Chairman Gillilland and member Minetti filed as part of the original document.

[1] We expect Northwest to include in this plan all proposed service at New England points, other than Boston or Hartford/Springfield, where the carrier is to be certificated. With respect to Boston and Hartford/Springfield, Northwest should set forth all proposed service between these points and other New England communities. In addition, we have approved the transfer to Northwest of a number of New England points at which Northeast has been authorized to suspend service, subject, in most cases, to a requirement of replacement service. We expect Northwest to indicate whether it intends to continue to suspend service at these points, and whether it intends to prosecute Northeast's application, Docket 21331, for certificate amendments relating, inter alia, to the New England points at which Northeast has been authorized to suspend service.

[2] The steps the Board might take include an expedited adequacy-of-service investigation, as either an issue in the present case or as a separate proceeding.

[3] For example, we note that the Maine Parties have suggested that Northwest be authorized to provide service between Hartford/Springfield and points in Maine.

[4] Dockets 21331, 21332, and 21333.

[5] Order 69-12-73, dated Dec. 16, 1969.

FEDERAL POWER COMMISSION

[Docket No. AR61-1 etc.]

AREA RATE PROCEEDING (PERMIAN BASIN SHOW CAUSE)

Notice of Further Interim Extension of Time

JANUARY 5, 1971.

A number of producers have filed motions requesting the Comimssion to reconsider the November 2, 1970, letter orders in which the Commission denied a previous motion filed by the producers on September 14, 1970, requesting, inter alia, that refunds be deferred pending formulation of a Commission policy on refunds. Movants request that a conference be convened concerning refunds in those proceedings and that the time within which to make refunds be extended. An interim extension of time to and including January 7, 1971, was granted by notice issued December 15, 1970.

In order to provide time for the Commission to consider the motions which have been filed herein, notice is hereby given that the time is further extended to and including February 8, 1971, within which refund reports shall be filed in the above-designated proceedings, pursuant to the November 2, 1970, letter orders.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-359 Filed 1-11-71;8:47 am]

[Docket No. AR61-1 etc.]

AREA RATE PROCEEDING (PERMIAN BASIN SHOW CAUSE)

Notice of Interim Extension of Time; Correction

DECEMBER 22, 1970.

In the notice of interim extension of time, issued December 15, 1970, and published in the FEDERAL REGISTER December 24, 1970 (35 F.R. 19594), change "January 7, 1970" to "January 7, 1971".

GORDON M. GRANT,
Secretary.

[FR Doc.71-357 Filed 1-11-71;8:47 am]

[Dockets Nos. RP71-18—RP71-25]

COLUMBIA GULF TRANSMISSION CO. ET AL.

Order Providing for Hearing, Suspending Proposed Revised Tariff Sheets and Granting Petitions to Intervene; Correction

DECEMBER 9, 1970.

Columbia Gulf Transmission Co., Docket No. RP71-18; United Fuel Gas Co., Docket No. RP71-19; Atlantic Seaboard Corp., Docket No. RP71-20; Kentucky Gas Transmission Corp., Docket No. RP71-21; The Ohio Fuel Gas Co., Docket No. RP71-22; Cumberland and Allegheny Gas Co., Docket No. RP71-23; The Manufacturers Light and Heat Co., Docket No. RP71-24; Home Gas Co., Docket No. RP71-25.

In the order providing for hearing, suspending proposed revised tariff sheets and granting petitions to intervene, issued November 13, 1970, and published in the FEDERAL REGISTER November 25, 1970 (35 F.R. 18060):

Appendix A: Kentucky Gas Transmission Corp., add: "Third Revised Sheet No. 32".

Appendix B: United Fuel Gas Co., change: "Third Revised Sheets Nos. 23 and 8", to read "Third Revised Sheets Nos. 23 and 28". Home Gas Co., add: "Fifth Revised Sheet No. 38". "Sixth Revised Sheet No. 37". "Seventh Revised Sheet No. 33".

Appendix C: Change "Commonwealth North Gas Corp." to read "Commonwealth Natural Gas Corp."

GORDON M. GRANT,
Secretary.

[FR Doc.71-358 Filed 1-11-71;8:47 am]

[Docket No. E-7585]

INTERSTATE POWER CO.

Notice of Application

JANUARY 6, 1971.

Take notice that on December 28, 1970, Interstate Power Co. (applicant) of Dubuque, Iowa, filed an application pursuant to section 203 of the Federal Power Act seeking authority to purchase from Central Iowa Power Cooperative of Marion, Iowa, certain electric transmission facilities and easements located in the counties of Buchanan and Delaware, State of Iowa.

The facilities proposed to be purchased by Applicant for a purchase price of $260,541, consist of approximately 18.1 miles of 161-kv. transmission line beginning at Interstate Power Co.'s Hazleton, Iowa, substation and running easterly to the Central Iowa Power Cooperative's Dundee substation in Delaware County, Iowa. One lot of terminating equipment installed in Interstate Power Co.'s Hazleton substation.

Applicant represents that after the purchase there will be no change in the use of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 22, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-361 Filed 1-11-71;8:48 am]

[Docket No. E-7577]

MISSISSIPPI POWER & LIGHT CO.

Notice of Extension of Time

JANUARY 5, 1971.

On December 31, 1970, Mississippi Power & Light Co. filed a motion requesting an extension of time within which to answer the "Protest and Petition to Intervene and for Rejection of Rate Schedules Submitted for Filing" filed by Capital Electric Power Association et al., on December 22, 1970, in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including January 8, 1971, within which Mississippi Power & Light Co. may file an answer to the petition filed by Capital Electric Power Association et al.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-360 Filed 1-11-71;8:47 am]

[Docket No. RP71-87]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Proposed Changes in FPC Gas Tariff

JANUARY 6, 1971.

Take notice that on December 31, 1970, Mississippi River Transmission Corp. (Mississippi) filed changes in its FPC Gas Tariff to be effective as of February 1, 1971. The proposed tariff revisions would increase charges for jurisdictional sales and services by approximately $10,600,000 per annum based on operations for the 12-month period ended September 30, 1970, as adjusted.

Mississippi's filing consists of two alternative sets of revised tariff sheets. The first contains provisions relating to a purchase gas adjustment clause; the second does not. In other aspects the two sets are identical. Mississippi requests waiver of the provisions of the Regulations under the Natural Gas Act, to the extent necessary, for purposes of accepting for filing the proposed tariff sheets incorporating the proposed gas adjustment clause in its tariff. If such waiver is not granted, Mississippi requests consideration of the alternative set.

The company states that the principal reasons for the changes in its tariff are (1) need for an overall rate of return of 10.5 percent; (2) increase in purchase gas costs stemming from tracking suppliers' rate increases and from changes in gas purchase pattern; (3) increased wages and salaries and increased cost of materials and supplies; (4) increased taxes; (5) increased in book depreciation to 5

percent; and (6) a return to normalization accounting for liberalized depreciation in determining Federal income taxes for cost-of-service purposes.

Any person desiring to be heard or to make any protest with reference to this filing should on or before January 20, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The tender is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-362 Filed 1-11-71;8:48 am]

[Docket No. RP71-88]

NORTH PENN GAS CO.

Notice of Proposed Changes in FPC Gas Tariff

JANUARY 7, 1971.

Take notice that on December 31, 1970, North Penn Gas Co. (North Penn) filed revised tariff sheets to its FPC Gas Tariff to be effective as of January 31, 1971. The proposed changes would increase charges for jurisdictional sales and service by approximately $84,000 per annum based on operations for the 12-month period ended October 31, 1970, as adjusted to reflect wage increases to be effective as of January 1, 1971, and certain other costs. North Penn states that the purpose of the rate filing is to offset increased costs of gas purchased from two of its suppliers—Consolidated Gas Supply Corp.'s increase which became effective as of November 1, 1970, and Transcontinental Gas Pipe Line Corp.'s increase which became effective as of January 1, 1971. The company concurrently filed a proposal that it be permitted to tack supplier rate changes and to flow through refunds received from its suppliers.

Any person desiring to be heard or to make protest with respect to said filing should on or before January 20, 1971, file with the Federal Power Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The filing is available at the Commission's offices for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-363 Filed 1-11-71;8:48 am]

[Docket No. E-7590]

NORTHERN STATES POWER CO. (MINNESOTA)

Notice of Application

JANUARY 7, 1971.

Take notice that on December 30, 1970, Northern States Power Co. (applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of $50 million principal amount of First Mortgage Bonds (Bonds).

Applicant is incorporated under the laws of the State of Minnesota with its principal business office at Minneapolis, Minn., and is engaged primarily in the electric utility business in central and southern Minnesota, southeastern South Dakota, and in the Fargo-Grand Forks and Minot areas of North Dakota.

The Bonds are to be issued at competitive bidding pursuant to the Commission's regulations under the Federal Power Act. Applicant has scheduled February 23, 1971, as the date for the opening of bids. The Bonds will be dated as of March 1, 1971, and will mature on either March 1, 1976, or March 1, 2001. The maturity date will be fixed by applicant not less than 3 business days prior to opening of bids.

If the Bonds mature on March 1, 1976, none of the Bonds will be subject to redemption.

If the Bonds mature on March 1, 2001, none of the Bonds will be redeemable prior to March 1, 1976, other than for the sinking fund, with money borrowed at a lower cost.

The proceeds from the sale of the Bonds will be used for construction expenditures and to prepay some of the outstanding short-term borrowings of the applicant, which are estimated at $50 million as of the date of issuance of the Bonds. The short-term borrowings have been or will be incurred in connection with the construction program of applicant.

Expenditures during 1971 for the construction program of applicant are estimated at $180 million, of which $170 million is for electric facilities, $6 million for gas facilities, and $4 million for heating, telephone, and general facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-364 Filed 1-11-71;8:48 am]

[Docket No. E-7581]

PENNSYLVANIA POWER & LIGHT CO.

Further Notice of Application

JANUARY 7, 1971.

Take notice that on December 4, 1970, Pennsylvania Power & Light Co. (applicant), 901 Hamilton Street, Allentown, PA 18101, filed an application with the Federal Power Commission pursuant to section 204 of the Federal Power Act seeking authority to issue short-term Promissory Notes including commercial paper notes.

Applicant is a Pennsylvania corporation principally engaged in the production, purchase, transmission, distribution, and sale of electricity in a service area of approximately 10,000 square miles in 29 counties of central eastern Pennsylvania with an estimated population of about 2.4 million persons.

The unsecured promissory notes are to be issued from time to time, prior to December 31, 1973, to lenders, brokers, dealers or direct purchasers of unsecured promissory notes, including banks and institutional investors. Notes in the form of commercial paper will mature in no more than 270 days from the date of issue, and all other notes will have maturities of less than 1 year from the date of issue. The aggregate face amount of such notes to be outstanding at any one time is not to exceed (i) 25 percent of applicant's gross revenues during the preceding 12 months of operations, or (ii) $90 million, whichever is less.

The proceeds from the issuance of the notes will be used principally as interim financing of applicant's construction program, which will require approximately $582 million over the 1971-73 period.

On December 16, 1970, the Commission issued a notice of the subject application. However, said notice was not published by FEDERAL REGISTER until December 28, 1970.

In order to give adequate notice, any person desiring to be heard or to make any protest with reference to said application should, on or before January 21, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-410 Filed 1-11-71;8:49 am]

[Docket No. RP71-41]

UNITED GAS PIPE LINE CO.

Order Providing for Hearing, Rejecting Proposed Revised Tariff Sheets, and Accepting and Suspending Proposed Alternate Revised Tariff Sheets

DECEMBER 31, 1970.

On November 13, 1970, United Gas Pipe Line Co. (United) tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, to become effective on January 1, 1971. The proposed rate changes would increase charges for jurisdictional sales and services by about $56,100,000 based on sales and transportation deliveries for the 12-month period ending July 31, 1970, as adjusted.

United also requests a waiver of § 154.38(d)(3) of the Commission's regulations, with respect to United's proposal to include a purchased gas adjustment clause in its rate schedules. If the waiver of § 154.38(d)(3) (which prohibits the inclusion of such clauses in rate schedules) is not granted, United proposes that its alternate tariff sheets,[1] which eliminate all references to the purchase gas adjustment clause, be considered in lieu of and in substitution for the proposed revised tariff sheets which contain such clause.

In addition to changes in rate levels, United proposes (1) modification of the billing demand provisions in Rate Schedules DG-C, DG-J, DG-NW, and DG-S, (2) revisions of the demand charge adjustment provision in said rate schedules and (3) other changes in the General Terms and Conditions and Forms of Service Agreement relating to definition of rate zones, determination of quality, measurement, delivery points, Maximum Daily Quantity, sales to rural customers, the inclusion of the above referred to purchased gas adjustment clause.

United states the main reasons for the proposed rate increases are (1) increases in costs over the costs included in its rate increase filing in Docket No. RP70-13, to maintain its gas supplies, for operating and maintaining its pipeline system, purchasing supplies, material, labor, and services for the pipeline, taxes, and financing its pipeline operations; (2) the proposed increases in its book depreciation rates to a composite rate of 5 percent; and (3) the need for an increase in rate of return to 9⅜ percent.

The reasonableness of including a purchased gas adjustment provision in United's tariff has not been tested in any evidentiary proceeding. If accepted at this time, this provision would become operative after suspension. The purchased gas adjustment provision raises a number of substantive issues which should be fully explored and resolved before rates and charges to United's customers are subjected to changes by application of this proposed adjustment provision. Accordingly, we deem it inappropriate at this time to waive the provisions of § 154.38(d)(3) of the Commission's regulations under the Natural Gas Act to permit the filing of United's proposed tariff sheets, containing a purchased gas adjustment provision. During the pendency of this proceeding, and prior to the determination of this issue, however, United will not be precluded from requesting permission to track supplier rate increases which increase the purchased gas costs filed for by United in this proceeding.

Review of the rate filing indicates that the issues therein raised require development in evidentiary proceedings. The proposed increased rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in United's FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed in Appendix A hereto be suspended, and the use thereof deferred as herein provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held commencing at 10 a.m. on February 1, 1971, in a hearing room of the Federal Power Commission, 441 G. Street NW., Washington, DC 20426, concerning the lawfulness of the rates, charges, classifications, and services contained in United's FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, United's alternate set of revised tariff sheets not containing a purchased gas adjustment provision described in Appendix A are hereby suspended and the use thereof is deferred until June 1, 1971, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) United's revised tariff sheets proposing a purchased gas adjustment provision are hereby rejected for filing. These proposed tariff sheets may be made a part of the record herein, to be considered, along with any modifications thereof or alternative provisions submitted by the parties of the Commission Staff, as a proposed purchased gas adjustment provision to be included in United's tariff.

(D) A Presiding Examiner to be designated by the Chief Examiner for that purpose [See Delegation of Authority, 18 CFR 3.5(d)], shall preside at, and control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure and the purposes expressed in this order.

(E) At the hearing on February 1, 1971, United's prepared testimony (Statement P) filed and served on November 30, 1970, together with its entire rate filing as submitted and served on November 13, 1970, shall be submitted to the record as United's complete case-in-chief as provided in the Commission's regulations, § 154.63(e)(1), and Order No. 254, 28 FPC 495, 496, without prejudice to the motions by other parties to exclude or strike this or other evidence.

(F) Following admission of United's complete case-in-chief, the parties shall proceed to effectuate the intent and purposes of § 2.59 of the Commission's rules of practice and procedure and of this order as set forth above.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

APPENDIX A

ALTERNATE PROPOSED TARIFF SHEETS FILED NOVEMBER 13, 1970

FIRST REVISED VOLUME NO. 1

Twelfth Revised Sheet No. 1
Eighth Revised Sheet No. 3
Eleventh Revised Sheet No. 4
Third Revised Sheet No. 5
Eleventh Revised Sheet No. 6
Third Revised Sheet No. 7
Thirteenth Revised Sheet No. 8
Third Revised Sheet No. 9
First Revised Sheet No. 9-C
First Revised Sheet No. 9-D
Eleventh Revised Sheet No. 10
Eleventh Revised Sheet No. 12
Thirteenth Revised Sheet No. 14
First Revised Sheet No. 15-A
First Revised Sheet No. 15-B
Eleventh Revised Sheet No. 21
Eleventh Revised Sheet No. 23
Eleventh Revised Sheet No. 25
Fourth Revised Sheet No. 26
Eleventh Revised Sheet No. 27
Eleventh Revised Sheet No. 30
Eleventh Revised Sheet No. 32
Second Revised Sheet No. 49
Third Revised Sheet No. 50
First Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 56
First Revised Sheet No. 59
First Revised Sheet No. 60
Second Revised Sheet No. 63
Second Revised Sheet No. 72
Second Revised Sheet No. 76
First Revised Sheet No. 77
Second Revised Sheet No. 78
First Revised Sheet No. 82
Second Revised Sheet No. 83
Second Revised Sheet No. 93-A
Seventeenth Revised Sheet No. 100
Eighteenth Revised Sheet No. 101
Fourteenth Revised Sheet No. 102
Sixteenth Revised Sheet No. 103
Sixteenth Revised Sheet No. 104
Second Revised Sheet No. 105
First Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 108

[FR Doc.71-356 Filed 1-11-71;8:47 am]

[1] See Appendix A hereto.

FEDERAL RESERVE SYSTEM

BANKERS TRUST NEW YORK CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Bankers Trust New York Corp., which is a bank holding company located in New York, N.Y., for prior approval by the Board of Governors of the acquisition by applicant of 100 percent of the voting shares of The Industrial Bank of Binghamton, Binghamton, N.Y.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

By order of the Board of Governors, January 5, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-331 Filed 1-11-71;8:46 am]

FIRST UNION, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First Union, Inc., which is a bank holding company located in St. Louis, Mo., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of Crystal City State Bank, Crystal City, Mo.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System. Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of St. Louis.

By order of the Board of Governors, January 5, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-332 Filed 1-11-71;8:46 am]

OFFICE OF EMERGENCY PREPAREDNESS

APPLICATIONS FOR DISASTER ASSISTANCE UNDER DISASTER RELIEF ACT OF 1970

1. (a) Notice is hereby given that the authorities conferred upon the President by sections 201, 203 (a)-(g), 206, 221, 224, 225, 226(b), 237(b), 240, 241, 242(d), and 252 of the Disaster Relief Act of 1970 (Public Law 91-606), hereinafter referred to as the Act, have been delegated to the Director of the Office of Emergency Preparedness by Executive Order No. 11575 of December 31, 1970. In addition, the Director of the Office of Emergency Preparedness has been assigned certain other authorities by sections 202, 203(h), 207, 208, 209, 222, 223, 226(a), and 239 of the Act. Those sections of the Act authorize certain Federal assistance to States, communities, and individuals that suffered damage as a result of a major disaster as determined by the President either heretofore or hereafter under the meaning of the Act of September 30, 1950 or of this Act. Those sections of the Act are effective as of December 31, 1970, except that sections 226(b), 237(b), 241, and 252(a) are effective as of August 1, 1969.

(b) Assistance under the above-cited sections shall be provided in accordance with disaster assistance agreements entered into between the Federal Government and the Governors of the affected States. Pending the development and adoption of new regulations, which are scheduled to be issued in the near future, project applications may be submitted by State or local government entities through the Governor's Authorized Representative to regional offices of the Office of Emergency Preparedness, on the forms now in use for purposes of the Act of September 30, 1950 (Public Law 875, 81st Congress; 64 Stat. 1109).

2. The provisions of the current Parts 1709, 1710, 1711, and 1715, of Title 32 of the Code of Federal Regulations, and any other record or document of the United States referring to the Act of September 30, 1950 (64 Stat. 1109) shall be applicable with respect to the provisions of the Disaster Relief Act of 1970 that are administered by the Director of the Office of Emergency Preparedness, except to the extent that they are inconsistent with that Act and except that §§ 1709.2 (e) and 1710.7 of those regulations are hereby superseded.

Dated: January 6, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.71-340 Filed 1-11-71;8:49 am]

DEPARTMENT OF LABOR

Office of the Secretary

C. P. ELECTRONICS, INC.

Notice of Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under section 301(c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of former workers of C. P. Electronics, Inc., Columbus Plant, located at Columbus, Ind. (No. TEA-W-31). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff

Commission report should be certified as eligible to apply for adjustment assistance, provided for under title III, chapter 3, of the Trade Expansion Act of 1962, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before January 15, 1971.

Signed at Washington, D.C., this 6th day of January 1971.

EDGAR I. EATON,
Director, Office of Foreign Economic Policy.

[FR Doc.71-365 Filed 1-11-71;8:48 am]

WOOD & BROOKS CO.

Notice of Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under section 301 (c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of workers of the Wood & Brooks Co., Buffalo Plant, located at Buffalo, NY (No. TEA-W-33). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under title III, chapter 3, of the Trade Expansion Act of 1962, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before January 15, 1971.

Signed at Washington, D.C., this 6th day of January 1971.

EDGAR I. EATON,
Director, Office of Foreign Economic Policy.

[FR Doc.71-366 Filed 1-11-71;8:48 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 7, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42101—*Liquid caustic soda to Griffin, Ga.* Filed by O. W. South, Jr., agent (No. A6215), for interested rail carriers. Rates on sodium (soda), caustic (sodium hydroxide), liquid, in tank carloads, as described in the application, from Memphis, Tenn., to Griffin, Ga.

Grounds for relief—Rate relationship.

Tariff—Supplement 298 to Southern Freight Association, agent, tariff ICC S-484.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-374 Filed 1-11-71;8:49 am]

[Notice 633]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 7, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72177. By order of December 31, 1970, the Motor Carrier Board approved the transfer to Caesar Towing, Inc., doing business as Arrow Towing, Brooklyn, N.Y., of certificate No. MC 125890 (Sub No. 1) issued to 50 State Auto Delivery, Inc., doing business as Arrow Towing Service, Brooklyn, N.Y., authorizing the transportation of: Wrecked, disabled, and replacement vehicles, used forklift trucks, used car cranes and used truck cranes, between New York, N.Y., and points on Long Island, N.Y., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia. George A. Olsen, practitioner, 69 Tonnele Avenue, Jersey City, NJ 07306.

No. MC-FC-72366. By order of December 31, 1970, the Motor Carrier Board on reconsideration approved the transfer to Shea Moving & Storage, Inc., Harrison, N.Y., of the operating rights in certificate No. MC-81852 issued June 1, 1949, to Katherine L. Shea, Thomas Gregory Shea and George Archer, Jr., a partnership, doing business as Hugh Shea & Sons, Harrison, N.Y., authorizing the transportation of household goods, as defined by the Commission, between New York, N.Y., and points in Westchester County, N.Y., on the one hand, and, on the other, Washington, D.C., and points in Massachusetts, Connecticut, New Hampshire, Rhode Island, New Jersey, Pennsylvania, and Maryland, traversing Delaware for operating convenience only. Alvin Altman, 1776 Broadway, New York, NY 10019, attorney for applicants.

No. MC-72496. By order of December 29, 1970, the Motor Carrier Board approved the transfer to Julian Martin, Batesville, Ark., of the operating rights in certificate No. MC-124141, issued September 10, 1962, to Roy A. Prince, Amagon, Ark., authorizing the transportation of: Lumber, from Harrisburg, Ark., to Memphis, Tenn. Mr. Julian Martin, 1490 South 14th Street, Batesville, AR 72501.

No. MC-FC-72508. By order of December 31, 1970, the Motor Carrier Board approved the transfer to Mike Mitchell, doing business as Lost Trail Stages, Salmon, Idaho, of the operating rights in No. MC-113730 (Sub-No. 1), issued July 22, 1968, to Glenn S. Munkres, doing business as Lost Trail Stages, Salmon, Idaho, authorizing the transportation of Passengers and their baggage, and express, mail, and newspapers in the same vehicle with passengers, between Salmon, Idaho, and Darby, Mont., over regular routes, serving all intermediate points with reservation of incidental charter operations in interstate or foreign commerce. Frederick H. Snook, Box 1227, Salmon, ID 83467, attorney at law.

No. MC-FC-72553. By order of December 30, 1970, the Motor Carrier Board approved the transfer to Starner Trucking Co., Inc., York, Pa., of the operating rights in certificate No. MC-76085 (Sub-No. 1), issued November 23, 1959, to Earl E. King, Rural Delivery No. 1, East Berlin, PA 17316, authorizing the transportation of: Agricultural limestone, in spreader type equipment, over irregular routes, from Jackson Township (York County), Pa., to points other than incorporated municipalities, in Baltimore, Carroll, Cecil, Frederick, Harford, Howard, and Montgomery Counties, Md. Norman T. Petow, Esq., 43 North Duke Street, York, PA 17401, attorney for transferee.

No. MC-FC-72564. By order of December 31, 1970, the Motor Carrier Board approved the transfer to Loraine Transfer & Storage Co., Inc., Post Office Box 1752, Shreveport, LA 71102, of the operating rights in certificate No. MC-111705 (Sub-No. 1) issued April 4, 1961, to

H. L. Davidson, doing business as Loraine Transfer & Storage Co., 3514 East Texas, Bossier City, LA 71010, authorizing the transportation of household goods, as defined by the Commission, between points in Louisiana, on the one hand, and, on the other, points in Arkansas and Texas.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-373 Filed 1-11-71;8:49 am]

[No. 35251]

BANKERS DISPATCH CORP.

Petition for Relief

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 20th day of August, 1970.

It appearing that, by petition filed April 5, 1970, Bankers Dispatch Corp., seeks relief from the requirements of section 218(a) of the Interstate Commerce Act with respect to filing schedules of its actual rates and charges similar to the relief granted in Armored Carrier Corp. Petition for Relief, section 218(a), 303 I.C.C. 781; and confirmation that the operations of petitioner are within the purview of 49 CFR § 1053.3, to preclude the necessity of filing copies of its transportation contracts with the Commission; and that pursuant to publication of notice of the filing of the instant petition in the FEDERAL REGISTER on July 1, 1970, no replies have been received thereto;

It is ordered, That an investigation be, and it is hereby, instituted for the purpose of determining whether the relief sought is warranted as required in section 218(a), and publication of this order be made in the FEDERAL REGISTER.

And it is further ordered, That this proceeding be handled under the modified procedure; and that the filing and service of pleadings be as follows: (a) Opening statement of facts and argument by the petitioner, and any party supporting the petitioner, on or before 20 days from the date of publication of this order in the FEDERAL REGISTER, (b) 30 days after that date, statement of facts and argument by any party in opposition; and (c) 10 days thereafter reply by the petitioner and any supporting party.

By the Commission, Division 2.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.71-314 Filed 1-8-71;8:48 am]

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

3 CFR

5 CFR

7 CFR

8 CFR

9 CFR

10 CFR

13 CFR

14 CFR

15 CFR

16 CFR

18 CFR

20 CFR

21 CFR

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26 CFR

26 CFR—Continued

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32 CFR

32A CFR

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41 CFR

FEDERAL REGISTER

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Tuesday, January 12, 1971 • Washington, D.C.

PART II

POSTAL RATE COMMISSION

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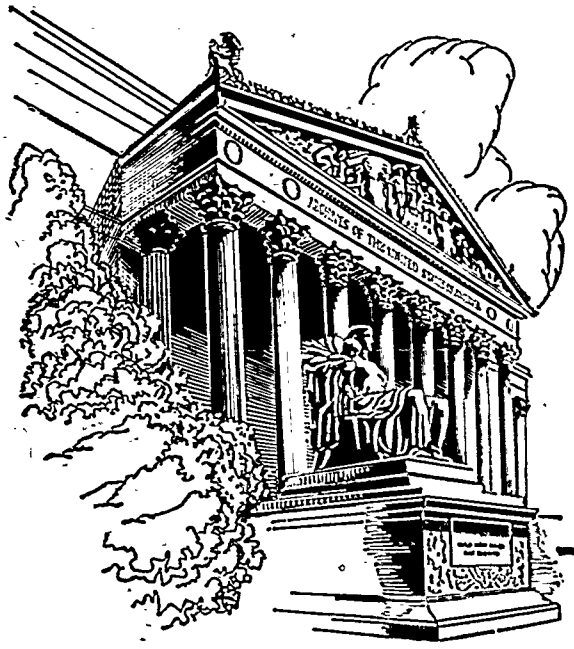
Rules of Practice and Procedure



Title 39—POSTAL SERVICE

Chapter III—Postal Rate Commission

PART 3001—RULES OF PRACTICE AND PROCEDURE

The Postal Rate Commission promulgates this Part 3001 as the Postal Rate Commission's rules of practice and procedure governing the conduct of proceedings before the Commission in matters concerning rates of postage, fees for postal services, mail classification schedules and changes in such schedules, changes in the nature of postal services generally affecting service on a nationwide or substantially nationwide basis, complaints as to rates and services of such nature.

The Postal Reorganization Act, as well as the legislative history and matters developed in pertinent hearings before committees of the House and Senate, including presentations to the Congress by the Postal Service concerning revenue objectives and imminent proposals for postal rate increases, point to the urgency of the immediate promulgation of Part 3001.

Notice and public procedure are not required by the Administrative Procedure Act as to rules of agency organization, procedure or practices. Furthermore, as to the rules here promulgated the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

This Part 3001 shall become effective upon its publication in the FEDERAL REGISTER.

Interested persons may submit written comments concerning these rules to the Postal Rate Commission, Washington, D.C. 20268.

By order of the Postal Rate Commission.

WILLIAM J. CROWLEY,
Chairman.

Subpart A—Rules of General Applicability

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

Subpart E—Rules Applicable to Rate and Service Complaints

AUTHORITY: The provisions of this Part 3001 issued under sec. 3603, 84 Stat. 759, 39 U.S.C. 3603.

Subpart A—Rules of General Applicability

§ 3001.1 The Commission and its offices.

(a) *The Commission.* The Postal Rate Commission is an independent establishment of the Executive Branch of the U.S. Government created by the Act. The Commission consists of five Commissioners appointed by the President one of whom is designated as Chairman by the President. Three members of the Commission constitute a quorum for the transaction of business, but all final acts of the Commission shall be by a vote of an absolute majority of the Commissioners.

(b) *The Chairman.* The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the officers and employees of the Commission. He has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission will, in case of a vacancy in the office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, designate one of its members Acting Chairman to serve during the period of vacancy, absence or inability.

(c) *The Secretary.* The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, its rules and regulations, its administrative and other orders, and records. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(d) *The Staff.* The Staff consists of such accounting, economic, engineering, legal, and rate experts, and such other employees as the Commission, from time to time, shall find necessary.

(e) *Offices.* The offices of the Commission are in Washington, D.C. All communications to the Commission should be addressed to: Postal Rate Commission, Washington, DC 20268.

(f) *Hours.* The offices of the Commission will be open from 8:45 a.m. to 5:15 p.m. of each day except Saturdays, Sundays, and holidays, unless otherwise directed by Executive order or officially declared, with appropriate notice.

§ 3001.3 Scope of rules.

The rules of practice in this part are applicable to proceedings before the Postal Rate Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24."

§ 3001.5 Definitions.

(a) "Act" means the Postal Reorganization Act (84 Stat. 719, Title 39, United States Code).

(b) "Postal Service" means the U.S. Postal Service established by the Act.

(c) "Commission" or "Commissioner" means, respectively, the Postal Rate Commission established by the Act or a member thereof.

(d) "Secretary" means the Secretary or the Acting Secretary of the Commission.

(e) "Presiding officer" means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or hearing examiner of the Commission designated to preside at hearings or conferences.

(f) "Person" means an individual, a partnership, corporation, trust, unincorporated association, or governmental agency.

(g) "Party" means the Postal Service, a complainant, or a person who has been permitted to intervene in a proceeding before the Commission.

(h) "Participant" means any party and the officer of the Commission who is designated to represent the interests of the general public.

(i) "Complainant" means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) "Hearing" means a hearing under sections 556 and 557 of title 5, United States Code (80 Stat. 386), as provided by sections 3624, 3661, and 3662 of the Act.

(k) "Record" means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) "Effective date" of an order or notice issued by the Commission or an officer thereof means the date of issuance unless otherwise specifically provided.

§ 3001.6 Appearances.

(a) *By whom.* An individual may appear in his own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer of any party or an attorney acting in a representative capacity appears in person or signs a paper filed with the Commission, his personal appearance or signature shall constitute a representation to the Commission that he is authorized to represent the particular party in whose behalf he acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his authority to act in such capacity.

(c) *Designation for service.* A person intending to appear before the Commission or its presiding officer in a representative capacity for a party in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless the person is named in an initial filing of the party whom he represents as a person to whom communications from the Commission in regard to the filing are to be addressed. Failure to file a notice required by this paragraph shall constitute a waiver of the right to service of documents.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(e) *Disqualification and suspension.* After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be ground for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

(f) *Disqualification of former members and employees*—(1) *Permanent.* No former Commissioner or employee, including a special Commission employee, shall act as agent or attorney before the Commission for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Commissioner or employee.

(2) *Temporary.* Within 1 year after termination of employment with the Commission, no former Commissioner or employee, including a special Commission employee, shall appear personally before the Commission on behalf of any person other than the United States in any Commission proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility at any time within 1 year preceding termination of such responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

§ 3001.7 Ex parte communications.

(a) *Prohibition.* To avoid the possibility or appearance of impropriety or of prejudice to the public interest and persons involved in proceedings pending before the Commission, no person who is a party to any on-the-record proceeding or his counsel, agent, or other person acting on his behalf, nor any interceder, shall volunteer or submit to any member of the Commission or member of his personal staff, to the presiding officer, or to any employee participating in the decision in such proceeding, any ex parte off-the-record communication regarding any matter at issue in the on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, presiding officer, or employee participating in the decision in such proceeding, shall request or entertain any such communication. For the purposes of this section, the term "on-the-record proceeding" means a proceeding noticed pursuant to § 3001.17. The prohibitions of this paragraph shall apply from the date of issuance of such notice.

(b) *Placement in public file.* All written ex parte communications prohibited by paragraph (a) of this section shall be delivered to the Secretary of the Commission for placement in a public file associated with the case but separate from the record material upon which the Commission may rely in reaching its decision.

(c) *Offer of communications.* A Commissioner, member of his immediate staff, presiding officer or employee participating in the decision in any on-the-record proceeding who receives an offer of any communication concerning any matter at issue in such proceeding shall decline to listen to such communication and explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action. Such written report shall be included in the file maintained by the Secretary pursuant to paragraph (b) of this section.

(d) *Opportunity to rebut.* Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which the Secretary has associated with the record may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3001.8 No participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to § 3001.17, no officer, employee or agent of the Commission who appears in the hearing in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding except as a witness or counsel in public proceedings.

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of any written document required by these rules or any applicable statute,

rule, regulation or order of the Commission, or by direction of the presiding officer shall be made by filing with the Office of the Secretary, Postal Rate Commission, Washington, DC 20268, during normal business hours on a date no later than that specified for such filing. Documents received after the close of normal business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and all parties to the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

(a) *Typewritten.* If not printed, documents filed with the Commission shall be typewritten on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left-handed margin not less than 1½ inches wide and other margins not less than 1 inch, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than 10 pages. The text shall be double-spaced except that footnotes and quotations of more than a few lines may be single spaced. Type not smaller than elite shall be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

(b) *Printed.* Printed documents filed with the Commission shall, insofar as practicable, not be less than 10-point type adequately leaded, on unglazed paper cut or folded to a size of 8 to 8½ inches wide and 10½ to 11 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded, indented quotations.

(c) *Number of copies.* Except for correspondence or as otherwise may be required by the Commission, the Secretary, or the presiding officer in any proceeding, an original and 14 fully conformed copies of each document required or permitted to be filed under this part shall be filed with the Secretary. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

§ 3001.11 General contents of documents.

(a) *Caption and title.* The caption of a document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall show the name of the person in whose behalf the filing is made and a brief description of the document or the nature of the relief sought therein (i.e., motion for extension, brief on exceptions, complaint, petition to intervene, answer to complaint). If the document is filed on behalf of more than one person, a single name only need be included in the title.

(b) *Designation of person to receive service.* The first page of the initial document filed by any person in any proceeding shall state the name and full post office address of the person or persons who may be served with any documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Subscription.* The original of any document filed with the Commission shall be signed in ink by the participant filing the same or by an authorized officer, employee, attorney or other representative, and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto. The signature of any person subscribing any document filed with the Commission constitutes a certification that he has read the document being subscribed and filed; that he knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

(f) *Table of contents.* All documents other than briefs filed with the Commission consisting of 20 or more pages shall contain a subject-index of the matter in such document with page references.

(g) *Certificate of service.* There shall be attached to the original of each document filed with the Commission a certificate of service signed in ink showing service on all participants in a proceeding as prescribed by § 3001.12. All other copies filed and served shall be fully conformed thereto.

§ 3001.12 Service of documents.

(a) *Service by the Commission.* Notices, orders, and other similar documents issued by the Commission or presiding officer shall be served by the Secretary upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer.

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer.

(c) *Limitation on extent of service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and the person or persons designated for service of documents by each party with the address designated in the party's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c); provided, however, the Secretary is not required to include on such list more than two designated representatives for any party to the proceeding. The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the persons, active participants or groups on the Secretary's service list in any proceeding, as directed by the Commission or hearing officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by first class mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service upon the Postal Service shall be made by delivering or mailing the same to the Office of the Assistant General Counsel, Postal Rates and Mail Classifications Division, U.S. Postal Service, Washington, DC 20260.

(f) *Date of service.* Whenever service is made by mail, the date of mailing shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(g) *Form of certificate of service.* The certificate of service shall show the name of the participant or his counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice."

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings which have been set for hearing, which proceedings shall be heard on the

date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. The docket and hearing calendar shall be available for public inspection during the office hours of the Commission, insofar as consistent with the proper discharge of the Commission's duties.

§ 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or holiday. A part-day holiday shall be considered as other days and not as a holiday.

§ 3001.16 Continuances and extensions of time.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer upon motion for good cause shown unless the time for performance or filing is limited by statute. Requests for extension of time shall be by written motion timely filed with the Commission stating the facts on which the application rests, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a matter of discretion be acted upon without waiting for answers thereto.

§ 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a formal request that the Commission submit a recommended decision on changes in postal rates or fees or establishing or changing the mail classification schedule;

(2) The Commission proposes on its own initiative to issue a recommended decision on changes in the mail classification schedule;

(3) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(4) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to Subpart E of this part; or

(5) The Commission in the exercise of its discretion determines to institute any other proceeding under the Act.

(b) *Publication and service of notice.* Each notice of proceeding shall be published in the FEDERAL REGISTER and served on the Postal Service, and the complainant in a complaint proceeding.

(c) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of the categories listed in paragraph (a) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, or proposals for changes in the nature of postal services or, in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;

(4) The date by which petitions for leave to intervene and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include.

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* In any case noticed for a proceeding to be determined on the record pursuant to § 3001.17, the Commission shall hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37, and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.38 to 3001.39.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument, and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17, the Commission shall give due notice of any prehearing conference or hearing in the notice of proceeding by including therein the time and place of the conference or hearing or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing and the designation of the presiding officer. Similar notice shall be issued of the time and place where a hearing will be reconvened unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing. Such notices shall be published in the FEDERAL REGISTER and served on all participants in the proceeding involved.

§ 3001.20 Formal interventions.

(a) *Who may intervene.* A petition for leave to intervene will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17 from any person claiming an interest of such nature that his intervention is necessary or appropriate to the administration of the Act.

(b) *Contents of petitions.* A petition to intervene shall clearly and concisely set forth the nature and extent of the petitioner's interest in the issues to be decided, including the classifications of postal service utilized by the petitioner giving rise to his interest in the proceeding, and the position of the petitioner with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such petition shall affirmatively state whether or not the petitioner requests a hearing or in lieu thereof, a conference, and whether or not the petitioner intends to actively participate in a hearing. Such petition shall also include on page one thereof the name and full mailing address of the person or persons who are to receive service of any documents relating to such proceeding.

(c) *Form and time of filing of petitions.* Petitions to intervene shall be filed no later than the date fixed for the filing of such petitions in any notice or order with respect to the proceeding issued by

the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Petitions to intervene shall conform to the requirements of §§ 3001.9 to 3001.11 and shall be served on the Postal Service and the complainant in a complaint proceeding pursuant to § 3001.12.

(d) *Answers.* Answers to petitions to intervene may be filed by any party to a proceeding or any person who has filed a petition to intervene therein no later than 7 days after the petition to intervene is filed.

(e) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions to intervene, the Commission shall rule on each petition to intervene and shall grant or deny such intervention or may, if found to be appropriate, authorize limited participation.

(f) *Effect of granting intervention.* A person permitted to intervene shall be a party to the proceeding, subject, however, to the right of the Commission or the presiding officer as specified in § 3001.24 to require two or more interveners having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No decision granting intervention to any person shall be deemed to constitute a decision that the intervening party has such an interest in the proceeding that he would be aggrieved by an ultimate decision or order of the Commission.

§ 3001.21 Motions to the Commission.

(a) *Scope and contents.* An application to the Commission for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Commission and served pursuant to the provisions of §§ 3001.9 to 3001.12.

(b) *Answers.* Within 7 days after a motion is filed, or such other period as the Commission may fix, any party to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission otherwise provides, no reply to an answer or any further responsive document shall be filed.

§ 3001.22 Requests for waiver.

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other participants and is consistent with the public interest and the Commission's expeditious discharge of its responsibilities under the Act. A request for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

§ 3001.23 Presiding officers.

(a) *Authority delegated.* Presiding officers shall have the authority, within the Commission's powers and subject to its published rules, as follows:

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in § 3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in § 3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of § 3001.24;

(7) To dispose of procedural requests or similar matters but not, before their initial or recommended decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an initial or recommended decision in accordance with §§ 3001.38 and 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(b) *Conduct of hearings.* It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of his rulings on matters of order and procedure shall be noted on the record, and where he deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the presiding officer immediately may submit to the Commission his report thereon, together with his recommendations, and in his discretion, suspend the hearing.

(c) *Limitations.* Presiding officers shall perform no duties inconsistent with their duties and responsibilities as such. Except to the extent required for the disposition of ex parte matters as authorized by law and by the rules of the Commission, no presiding officer shall, in any proceeding in which the Commission may so direct, or in any proceeding required by statute to be determined on the record after opportunity for hearing, consult any person on any matter in issue unless upon notice and opportunity for all participants to be heard.

(d) *Disqualification.* A presiding officer may withdraw from a proceeding when he deems himself disqualified, or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed.

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its recommended decision or advisory opinion on requests under sections 3622, 3623, and 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(b) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may, in his discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission's officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants shall be expected to reach agreement on those matters which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held and in paragraph (d) of this section. A report on the results of such off-the-record conference shall be made to the presiding officer on the record at a time specified by the presiding officer and he shall then determine the further prehearing procedures to be followed.

(c) *Required preparation and cooperation of all parties.* All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives, through thorough advance preparation for the

prehearing conference, including informal communications between the participants, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any participant to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any participant.

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant with regard to information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant.

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant.

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute.

(5) Grouping parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer.

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding, each factor stated in section 3622 or 3623 of the Act.

(7) Limitation of the scope of the evidence and the number of witnesses to eliminate irrelevant, immaterial, or cumulative and repetitious evidence.

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses.

(9) Division of the proceeding where practicable into two or more phases for separate simultaneous hearings.

(10) Fixing dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing.

(11) Order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible.

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories, including request for nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify.

(b) *Answers and objections.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. The answers are to be signed by the person making them and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections if any, within 10 days after service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing.

(c) *Supplemental answers.* A participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he obtains information upon the basis of which he knows that the answer was incorrect when made or is no longer true.

(d) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon which the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection.

(b) *Answers and objections.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 5 days after the service of the request; or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to, in which event the reason for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(c) *Orders.* The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall repsond to a request for inspection, and may make any protective order of the nature provided in paragraph (d) of § 3001.25 as may be appropriate.

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing.

(b) *Answers and objections.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 10 days after service of the request, or within such

other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or objection addressed to the matter which shall be signed by the participant or his attorney.

(c) *Orders.* If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served, or may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to the hearing.

§ 3001.28 Failure to comply with orders for discovery.

If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery, pursuant to §§ 3001.25 to 3001.27, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3001.29 Settlement conferences.

Any participant in a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the participants to consider such offers or proposals. The Commission or the presiding officer shall afford the participants appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any participant claiming such privilege.

§ 3001.30 Hearings.

(a) *How Initiated.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in § 3001.19.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting en banc, or a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing in whose behalf each such appearance has been made.

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3622, 3623, or 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act. With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) *Presentation by parties.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination, objection, motion, and argument. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately (1) the number of witnesses to be heard upon any issue, (2) the examination by any participant to specific issues, and (3) the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* After a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his intermediate decision. This section shall not preclude a presiding officer, within his discretion, from referring any motion made in hearing to the Commission for ultimate determination.

§ 3001.31 Evidence.

(a) *Form and admissibility.* In any public hearing before the Commission, or a presiding officer, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary.* Documents and detailed data and information shall be presented as exhibits. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, such document may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or, if the Commission or the presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(c) *Commission's files.* In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economical statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) *Prepared testimony.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit.

(f) *Form of prepared testimony and exhibits.* All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10 (a) and (b).

(g) *Copies to participants.* Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the

presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of the Commission as an expert body: *Provided,* That any participant shall, on timely request, be afforded an opportunity to show the contrary.

§ 3001.32 Appeals from rulings of the presiding officer.

(a) *During hearing or conference.* Rulings of the presiding officer may be appealed by participants during the course of conferences or hearings only in extraordinary circumstances where the presiding officer shall find that prompt decision by the Commission is necessary to prevent detriment to the public interest. In such instance the appeal shall be referred forthwith by the presiding officer to the Commission for determination.

(b) *Commission action.* Unless the Commission acts upon questions referred by the presiding officer within 7 days after referral, the appeal shall be deemed to be denied. The participants in the proceeding shall be notified by the presiding officer of the date of referral.

§ 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant before the hearing is closed. An authorization to take the deposition of a witness will be issued only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate with the Commission or the presiding officer and shall state (1) the name, identification, and post office address of the witness, (2) the subject matter of the testimony, (3) the time and place of taking the deposition, (4) the name, identification, and post office address of the officer before whom the deposition is to be taken, and (5) the reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the participants within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, and the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any participant or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under his direction and in his presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt the Secretary shall hold the original for use in the hearing upon request by any participant and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a participant, any other participant may require him to introduce all of it which is relevant to the part introduced, and any participant may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the participant or participants on whose application the deposition was taken.

§ 3001.34 Briefs.

(a) *When filed.* Such briefs shall be filed in any proceeding as may be ordered by the Commission or the presiding officer. The determination of what, if any, briefs are to be filed and the time to be allowed for the filing of briefs shall give regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

§ 3001.35 Proposed findings and conclusions.

In lieu of formal briefs the Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3001.36 Oral argument before the presiding or other designated officer.

In any case in which the presiding officer is to issue an initial or recommended decision, or another resignated officer of the Commission is to issue a recommended decision, such officer may permit the presentation of oral argument before him when, in his opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants his hearing such argument. Such officer shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3001.37 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time allowed each participant, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least 7 days in advance of the argument. Enlargements of such charts, graphs, maps and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3001.38 Omission of intermediate decisions.

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be ommitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

§ 3001.39 Intermediate decisions.

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his initial decision on the matters and issues presented for decision in such proceeding.

(b) *Tentative decision.* Prior to the issuance of an initial decision by the presiding officer, the Commission, with notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) *Contents.* All intermediate decisions (initial, recommended or tentative) shall include (1) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and (2) the appropriate recommended decision, advisory opinion or public report pursuant to the Act. An intermediate decision in a proceeding under section 3622 or 3623 of the Act shall include a statement specifically responsive to the criteria established under section 3622 or 3623 of the Act, as the case may be; and an intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

(d) *Service and Commission review.* All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to § 3001.12 and shall be subject to review by the Commission on its own initiative, or the filing of exceptions by the participants pursuant to § 3001.40.

(e) *Unavailability of presiding officer.* In any proceeding in which the intermediate decision is not omitted pursuant to § 3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issued a tentative decision, as the Commission may deem appropriate.

(f) *Effect of intermediate decision.* Unless briefs on exceptions are filed to an intermediate decision pursuant to § 3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

§ 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions with the Commission within 15 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any participant to a proceeding may file a response to briefs on exceptions within 15 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No

further response will be entertained unless the Commission upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with § 3001.34. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another participant to which reference is made.

(c) *Failure to except results in waiver.* Any participant who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

§ 3001.41 Rulemaking proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 15 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor.

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.

§ 3001.42 Public information and requests.

This section prescribes the rules governing: Publication of recommended decisions, advisory opinions, and public reports; and public records of the Commission.

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided in §§ 3001.12(a) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER. Commission recommended decisions, advisory opinions and public reports, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly.

(b) *Public records.* The public records of the Commission, available upon specific request for inspection and copying during regular business hours in the Secretary's office include:

(1) All submittals and filings as follows:

(i) Requests of the Postal Service for recommended decisions or advisory opinions, public reports, complaints (both formal and informal) and other papers seeking Commission action;

(ii) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, Executive order, or Commission rule, regulation, or order;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing.

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Formal record" includes in addition to all the filings and submittals, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, all exhibits received in evidence, offers of proof, motions, stipulations, proofs of service, referrals to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others except within his own office.

(5) All Commission orders, notices, findings, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information by the Postal Service.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress but only if and after made public or released for publication by that Office or the Committee or Member of Congress involved.

(9) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, recommended decision, advisory opinion, or public report issued or administered by the Commission and letters of opinion on that subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or any of the staff.

(10) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in Court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(11) The Commission's administrative and operating manuals as issued.

(12) All other records of the Commission except for those that are:

(i) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Related solely to the internal personnel rules and practices of the Commission;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(vi) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any recommended decision, advisory opinion or public report and findings, with or without opinion, or report in any matter or proceeding;

(viii) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

(c) *Other records.* Records not made part of the public records by this section may be requested in writing, accompanied by a showing in support thereof, filed with the Secretary and will be made available for public reference upon good cause shown by order of the Commission where consistent with the public interest and permitted by the Commission's statutory authority.

(d) *Procedure in event of withholding of public records.* In any case where there is a question of interpretation under paragraph (b) of this section, the person seeking such record may request the Secretary, by petition to make such record available for inspection and copying. The Secretary shall either cause the record to be made available or shall state in writing the basis for his determination that the document requested is not a public record under paragraph (b) of this section. If the Secretary denies the petition, the person seeking the record may appeal such denial to the Commission by petition conforming to the requirements of §§ 3001.9 to 3001.12.

(e) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.52 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.54.

§ 3001.53 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.54 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Detailed data, information, and statements of explanation or reasons set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by specific reference to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following, where applicable:

(1) The then effective rate or rates of postage and fee or fees for postal service and the rate or rates of postage and fee or fees for postal service as proposed to be changed or adjusted by the Postal Service;

(2) The total estimated costs of the Postal Service as specified in section 3621 of the Act which forms the basis for the proposed change in rates or fees. Such estimated costs shall be for a twelve-month period beginning not more than 9 months subsequent to the filing date of the formal request. Operating expenses included in such costs shall be shown with such reasonable detail as to classification and with such reasonable explanation so that the estimated amount for each item of expense may be readily understood. The amounts included for depreciation on capital facilities and equipment, debt service, and as a reasonable provision for contingencies shall be stated and explained in reasonable detail.

(3) Estimated revenues of the Postal Service from the then effective postal rates and fees and from the rates and fees as proposed to be changed or adjusted, shown separately by each class of mail or type of mail service and in total, and all other revenues of the Postal Service including appropriations, for the 12-month period utilized in the determination of the total estimated costs of the Postal Service upon which the request for changes in rates or fees is based;

(4) A statement of the actual costs and revenues of the Postal Service for the most recent 12-month period for which actual costs and revenues are reasonably available in the same detail as the estimated costs of the Postal Service upon which the request for changes in rates or fees is based, together with a comparison for each cost classification between actual costs thus shown and the estimated costs for the future 12-month period and an explanation of the reasons and basis for the differences;

(5) An analysis of the direct and indirect costs attributable to each class of mail or type of mail service and the portion of all other costs of the Postal Service reasonably assignable to each such class or type, together with a full statement and supporting information and data with regard to the nature and propriety of the costing concepts and the methods of cost allocation or assignment utilized;

(6) Such studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or charges for postal service are in accordance with such criteria.

§ 3001.55 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.62 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on establishing or changing the mail classification schedule, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.64.

§ 3001.63 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.64 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed new mail classification schedule or the proposed changes therein and to show that the mail classification schedule as proposed to be established or changed is in accordance with the policies and the applicable criteria of the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following, where applicable:

(1) The then effective mail classification schedule and the mail classification schedule to be established; or, after the establishment of the mail classification schedule, the then effective mail classification schedule and the proposed changes;

(2) A full and complete statement of the reasons and basis for the Postal Service's proposed mail classification schedule or proposed changes therein;

(3) Such studies, information and data relevant to the applicable criteria of the Act that will assist the Commission in determining whether or not the proposed mail classification schedule or proposed changes therein are in accordance with the policies and the applicable criteria of the Act;

(4) To the extent that the proposed mail classification schedule or proposed changes therein involve a change in rates or fees, such studies, information and data relevant to the criteria established by section 3622 of the Act as will assist the Commission in determining whether or not the proposed rates or charges for postal service are in accordance with such criteria; and

(5) To the extent that the proposed mail classification schedule or proposed changes therein involve changes in rates or fees which significantly increases the Postal Service's total revenues from rates and fees, such portion of the information and data and statement of reasons and basis specified for a formal request for a recommended decision for proposed changes in rates or fees in § 3001.54 as is necessary and appropriate to support and justify the proposed revenue increase.

§ 3001.65 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12.

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

§ 3001.71 Applicability.

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to Section 3661 of the Act requesting from the Commission an advisory opinion on changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved.

§ 3001.73 Filing of prepared direct testimony.

Simultaneously with the filing of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the polices of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.74 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and the parties of the nature, scope, significance and impact of the proposed change in the nature of postal services and to show that such change in the nature of postal service is in accordance with and conforms to the policies established under the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act.

§ 3001.75 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission in a proceeding under this subpart, the Postal Service shall serve copies of its formal request for an advisory opinion and its prepared direct evidence upon such officer and the parties permitted to intervene as provided by § 3001.12.

Subpart E—Rules Applicable to Rate and Service Complaints

§ 3001.81 Applicability.

The rules in this subpart govern the procedure with regard to rate and service complaints filed under section 3662 of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on such complaints.

§ 3001.82 Scope and nature of complaints.

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in

the Act, or who believe that they are not receiving postal service in accordance with the policies of such title, may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 to 3001.12. The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission. The Commission shall, in the exercise of its discretion, decline to entertain a complaint during the period the complainant is continuing to pursue the general subject matter of the complaint before a hearing examiner or the judicial officer of the Postal Service.

§ 3001.83 Contents of complaints.

Subject to the right of the Commission to require the furnishing of additional information, each complaint shall include the following information:

(a) The full name and address of the complainant(s):

(b) A full and complete statement of the grounds for such complaint, including specific reference to the postal rates or services involved and the policies to which it is claimed they do not conform;

(c) A list or description of all persons or classes of persons known or believed to be similarly affected by the rates or services involved in the complaint;

(d) A statement of the specific relief or redress requested;

(e) Copies of all correspondence or written communications between the complainant, his agent, representative, or attorney, and the Postal Service or any officer, employee or instrumentality thereof, and which relates to the subject matter of the complaint; provided, however, that any such documents which are a part of a public file in any proceeding before a hearing examiner or the Judicial Officer of the Postal Service need not be included if the complaint states the title, docket reference, nature, current status, and disposition of such proceeding.

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint with the Commission the Postal Service shall file and serve an answer in the form and manner required by §§ 3001.9 to 3001.12. Such answer shall include the following:

(a) Specific admission, denial or explanation of each fact alleged in the complaint or, if the Postal Service is without knowledge thereof, a statement to that effect. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(b) A statement as to the position of the Postal Service on the allegations in the complaint that the rates or service involved are not in accord with the policies of the Act, and the facts and reasons in support of such position;

(c) The position of the Postal Service on the specific relief or redress requested by the complainant, the disposition of the complaint recommended by the Postal Service, including whether or not a hearing should be held, and a statement of any facts and reasons in support of such position.

§ 3001.85 Informal procedures.

It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, including correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3001.86 Proceedings on the record.

If a complaint is not resolved or settled under informal procedures, the Commission shall consider whether or not, in its discretion, a proceeding on the record with an opportunity for hearing should be held on such complaint. If the Commission has reason to believe that the complaint may be justified and that a hearing may otherwise be appropriate in the exercise of its discretion, the Commission shall issue a notice of proceeding pursuant to § 3001.17, and further formal proceedings shall then be held as appropriate under the Commission's rules in Subpart A of this part.

§ 3001.87 Commission determinations.

If the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service if the complaint involves a matter of rates and fees or mail classification and shall render a public report if the complaint involves other matters. The Commission shall notify the complainant, the Postal Service, and any other parties in each complaint proceeding of the action taken or the final disposition of the complaint.

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